

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

| | | |
|----------------------------|---|------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Criminal Action |
| |) | No. 13-10200-GAO |
| |) | |
| DZHOKHAR A. TSARNAEV, also |) | |
| known as Jahar Tsarni, |) | |
| |) | |
| Defendant. |) | |
| |) | |

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

JURY TRIAL - DAY TWENTY-SEVEN

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Wednesday, March 4, 2015
9:16 a.m.

Marcia G. Patrisso, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

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P R O C E E D I N G S

THE CLERK: All rise.

(The Court enters the courtroom at 9:16 a.m.)

THE CLERK: Hear ye, hear ye, hear ye, all persons having business before the United States District Court for the District of Massachusetts draw near, give your attention and you shall be heard. God save these United States and this Honorable Court.

THE COURT: You may be seated.

00:00 THE CLERK: For trial, the case of United States versus Dzhokhar Tsarnaev, Docket 13-10200. Would counsel identify yourselves for the record, please.

MR. WEINREB: Good morning, your Honor. William Weinreb for the United States.

MR. CHAKRAVARTY: Aloke Chakravarty for the United States.

MS. PELLEGRINI: Good morning, your Honor. Nadine Pellegrini for the United States.

00:00 MR. MELLIN: Good morning, your Honor. Steve Mellin for the United States.

THE COURT: All right.

MR. BRUCK: Good morning, your Honor. David Bruck for the defendant, with Judy Clarke, Miriam Conrad, Tim Watkins and Bill Fick.

THE COURT: Good morning all.

1 MR. BRUCK: Thank you.

2 THE COURT: Let me just, for the record, resolve some
3 pending motions. Motion No. 1080, and the motion that is
4 attached to the motion filed under seal which is 1103, the
5 motion proper does not have -- I'll allow the motion to seal
6 and it will have a number, and Motion 1108, the fourth motion
7 to change venue, all those motions are denied and a brief
8 statement of the reasons will be forthcoming.

9 There are a couple of other matters that I think
00:01 10 counsel may want to be heard briefly at the side about so we'll
11 do a short -- a quick sidebar with respect to those.

12 (Discussion at sidebar and out of the hearing of the
13 public:)

14 THE COURT: Let me just say one of the motions that we
15 heard the other day, it was in the afternoon session, the DNA
16 motion, the government should avoid using the DNA for the time
17 being. My conclusion is that on the proffer that I've heard,
18 it is not sufficiently probative under 402, 403 to be admitted.
19 I do not reach the DNA or the late-filed issues.

00:02 20 Anything else?

21 MS. CLARKE: At sidebar?

22 THE COURT: That's what I was led to believe.

23 MS. CLARKE: The picture in the defense opening,
24 there's one picture that the defense does not object to.
25 That's Boylston Street.

1 THE COURT: I'll allow you to use both. I will
2 announce it from the bench because I think the mitigation
3 argument was in open court and I'll resolve that. The motion
4 is generally granted and I'll say that briefly, so.

5 With respect to the witness box, we're going to use
6 this witness box. We may make exceptions as they are shown to
7 be advisable to accommodate mental health or physical reasons,
8 but we'll have to have those documented. It is available to
9 use that but I prefer that because the monitor is interactive
00:03 10 whereas these are not. So we will make sparing exceptions.

11 MR. WEINREB: That's fine, your Honor. The witness
12 who's testifying today, we're not going to have enough time I
13 don't think to get written documentation. We could make a
14 proffer.

15 THE COURT: I'll accept a proffer to be supplemented
16 by something else.

17 MR. WEINREB: Very well. Also, we won't need an
18 interactive monitor for the witnesses who we're proposing to
19 use this location, so if that makes a difference.

00:04 20 MR. BRUCK: If we may state our objection for the
21 record, your Honor.

22 THE COURT: Go ahead.

23 MR. BRUCK: It's the defense position that the jury is
24 extremely likely to speculate as to the reasons why only
25 certain injured, severely injured, witnesses are testifying

1 from the special location. They are likely to believe, and in
2 fact to guess correctly, that it has to do with fear of the
3 defendant, and we think that that is an extremely prejudicial
4 conclusion to be drawn. We don't think it's improbable to
5 speculate, since it happens to be true, and we think the jury
6 my very well have figured it out. So we think that it is
7 prejudicial.

8 MS. CONRAD: Your Honor, if I can just add, just on
9 the record, we took a position that we did not object to
00:05 10 accommodating those witnesses so long as all witnesses were
11 treated equally. I just want to make sure that's on the
12 record.

13 THE COURT: I understood that, yes. No, but for the
14 reasons stated I think we'll proceed. I've taken those
15 considerations into effect. They're not the only
16 considerations, and I think accommodating witnesses who have
17 disabilities is important.

18 MR. WEINREB: Your Honor -- I'm sorry. I didn't mean
19 to interrupt.

00:05 20 THE COURT: No, that's all right.

21 MR. WEINREB: The government had filed two motions in
22 limine to preclude any argument or evidence during the
23 liability phase of the Waltham triple homicide and one to
24 preclude during the liability phase any arguments or evidence
25 of any plea negotiations that have taken place. Ms. Clarke

1 said that that was not an issue but we had never actually put
2 it on the record.

3 THE COURT: Neither is an issue?

4 MS. CLARKE: Neither is an issue.

5 MR. CHAKRAVARTY: Just one thing. To clarify, just to
6 make sure that the motion about the jury, the numbers that you
7 had just read out, I didn't really have the docket number to
8 match up to the --

9 THE COURT: The three motions were the jury plan
00:06 10 motion, which was the earliest of them; the next one was the
11 striking of the qualified panel, which is the one that -- 1103
12 is the motion to seal that motion. That will be allowed and
13 then it will be docketed and given a number so it doesn't yet
14 have a number. And the third was the fourth motion to change
15 venue.

16 MS. CLARKE: Did the Court finalize its instructions?

17 THE COURT: They will be very similar to what you have
18 heard. They'll be more expansive. I don't think there will be
19 a problem. It's pretty much my standard.

00:06 20 MS. CLARKE: We had provided, I think in there, a
21 summary of the indictment which the Court had.

22 THE COURT: I'm going to pretty much use that. It's
23 more summary than I would have given myself but --

24 MS. CONRAD: As modified by the parties in the two
25 filings?

1 THE COURT: Yeah. I can't promise I'm going to stick
2 to the script but I understand the point. The one thing I did
3 add to it, you'll hear that I will explain the three different
4 ways that the defendant could be found responsible
5 substantively for having committed the offense directly as an
6 aider and abetter and as a conspirator, because there are
7 conspiracy counts and I thought they should understand --

8 MS. CLARKE: And aiding and abetting counts.

9 THE COURT: Yeah, the aiding and abetting is
00:07 10 throughout.

11 MR. BRUCK: Is this the proper time to lodge our final
12 objection to the jury as --

13 THE COURT: Is this the final one?

14 (Laughter.)

15 MR. BRUCK: Yes.

16 THE COURT: Noted. The jurors are all here, they seem
17 to be in good spirits and we're ready to proceed.

18 MR. BRUCK: Well, if we may, I think we're probably
19 required, now that the jury is selected, to object to the
00:08 20 panel. And that's what we would like to do. And we would like
21 to incorporate all of the motions both regarding the jury pool
22 and venue, all of the objections about the voir dire, all of
23 the government's objections that were sustained and all of the
24 individual motions respecting particular jurors who are now
25 seated during the course of the jury selection.

1 THE COURT: Okay. Your rights are preserved. The
2 objections are overruled.

3 MS. CLARKE: Thank you.

4 (In open court:)

5 THE COURT: The parties had argued, I guess Monday,
6 the government's motion to exclude mitigation evidence as a
7 motion in limine. Motions in limine are often considered with
8 whether a certain particularly identified matter may or may not
9 be offered in evidence, such as a particular physical item or
00:09 10 perhaps evidence concerning a discrete subject matter. The
11 government's motion is directed rather at a general category,
12 mitigation evidence, the contents of which cannot be precisely
13 defined and about which the parties are likely to have
14 different views. It is therefore not possible to give a
15 precise ruling that will provide all the necessary guidance to
16 the parties. That said, the motion is granted as a general
17 matter.

18 After the presentation of evidence in the first phase
19 of the trial, the jury will be asked to say whether the
00:10 20 government has proved the defendant guilty of the crimes
21 charged in the indictment or not. That is a binary
22 determination. The jury will say either that he is guilty or
23 not guilty of each of those charges. Whether he is more or
24 less culpable than other participants is not a question to be
25 resolved in the first phase, and evidence bearing on such

1 considerations is not, generally speaking, relevant in that
2 phase and should not be admitted. Similarly, evidence about
3 the defendant's personal and family history and relationships
4 is not generally relevant and should not be admitted.

5 Nonetheless, the indictment does allege that the
6 defendant conspired with his brother to commit the crimes
7 charged and some evidence of the brother's interactions will be
8 inevitable. The defendant should take note, however, that the
9 admissibility of such evidence, whether on cross-examination or
00:11 10 in a direct case, in the first phase will depend on its
11 relevance to the ultimate question of the defendant's guilt or
12 not of the charges in the indictment.

13 I think we're ready to ask the jurors to join us in
14 the room.

15 THE CLERK: Very good.

16 (Pause.)

17 THE CLERK: All rise for the jury.

18 (The jury enters the courtroom at 9:32 a.m.)

19 THE COURT: You may all be seated.

00:17 20 Good morning, jurors.

21 THE JURORS: Good morning.

22 THE COURT: We're about to begin. Let me just ask
23 again, as you will hear me ask from time to time, have you
24 avoided all contact with outside influences, other people,
25 other media reports and everything? Has everybody been able to

1 do that?

2 THE JURORS: Yes.

3 THE COURT: Thank you.

4 We'll now formally begin proceedings by administering
5 the oath of office to the jurors. If you would rise again,
6 please.

7 (The jury is duly sworn.)

8 THE COURT: Jurors, with the administration of the
9 oath of office you are now an official jury and the trial is
00:18 10 officially underway. I'm going to give you a bit of a brief
11 overview of how we're going to proceed as this trial unfolds
12 and then we'll begin the actual presentation.

13 As I'm sure you can appreciate, this is a very
14 important occasion for both sides in this case. They have been
15 looking forward to it, preparing for it for some time, and they
16 need and expect and will get, I'm sure, your full attention and
17 serious consideration.

18 As you know, this is a criminal prosecution. The
19 government, by means of the indictment, which is the document
00:18 20 that presents the charges, outlines the scope of what will be
21 in issue. As you've heard before, this is a federal court and
22 the issues arise under federal law, not state law. The federal
23 criminal law is statutory law; that is, it is the result of
24 enactments of the Congress that describe certain conduct as
25 criminal and provide for its punishment. And so when the time

1 comes, you will be instructed as to the details of each of the
2 charges and what must be proved to prove an offense under the
3 relevant statute.

4 Criminal liability can arise in different ways. A
5 person may directly personally commit the acts that constitute
6 the offense. To take a simple example, it is a federal crime
7 to rob a federally insured bank, so a person may walk into the
8 bank, hand the teller a note demanding money, take the money
9 and leave the bank. The person will have directly committed
00:20 10 the offense of bank robbery. And when a person has himself
11 performed the deeds that constitute the crime, the person is
12 said to have committed a substantive offense.

13 In addition, a person may be guilty of a substantive
14 crime if he intentionally helps or assists another person to
15 commit the crime. The law refers to the act of assisting
16 another to commit a crime in legal language as aiding and
17 abetting the crime. Again, in our bank robbery example, a
18 person might assist the actual robber by agreeing to stand
19 lookout or perhaps waiting in a car to drive the robber away
00:20 20 from the bank after the robbery had occurred.

21 It is also a crime for persons to conspire together to
22 commit a crime. In brief, a criminal conspiracy is an
23 agreement of two or more persons to work cooperatively to
24 commit a substantive crime. So to use our bank robbery example
25 again, if two or more persons agree to work together to rob a

1 bank, they would be guilty of the crime of conspiracy. Joining
2 in a criminal conspiracy is a separate or distinct offense from
3 the crime which is the object of the conspiracy.

4 Now, as I say, the charges made against this defendant
5 as set forth in the indictment, which is a rather lengthy
6 document -- you'll have it ultimately for your review when your
7 deliberations begin. But for the time being, I will give you a
8 brief summary of what the indictment charges.

9 First, it charges the defendant with participating in
00:21 10 three separate conspiracies that began in or about February
11 2013 and ended on or about April 19, 2013. The indictment
12 alleges the defendant conspired with his brother, Tamerlan
13 Tsarnaev, to use a weapon of mass destruction to bomb a place
14 of public use and to destroy property. The indictment further
15 alleges that these conspiracies resulted in the deaths of
16 Krystle Marie Campbell, Lingzi Lu, Martin Richard and Officer
17 Sean Collier.

18 The indictment also charges the defendant with
19 multiple counts of using a weapon of mass destruction, bombing
00:22 20 a place of public use and destroying public property, and it
21 alleges that some of those counts -- some of the crimes alleged
22 in those counts resulted in the deaths of Krystle Marie
23 Campbell, Officer Collier, Lingzi Lu and Martin Richard.

24 The indictment also charges the defendant with
25 multiple counts of the possession and use of a firearm during

1 and in relation to a crime of violence, and it alleges that
2 some of those counts also resulted in the deaths of Krystle
3 Marie Campbell, Officer Sean Collier, Lingzi Lu and Martin
4 Richard. Finally, the indictment alleges that the defendant
5 carjacked and robbed an individual who was identified in the
6 indictment.

7 As you've heard during our selection process, the
8 defendant is presumed innocent of all of these charges unless
9 and until the government proves otherwise by the proof at
00:23 10 trial. The indictment is no proof that a defendant has
11 committed the acts alleged; it is simply a way of proposing the
12 question for the jury to consider based on the evidence that is
13 produced here in the course of the trial. The burden of proof
14 rests always with the government and never shifts to the
15 defendant to prove that he is innocent.

16 You know from what has preceded that the defendant is
17 charged with certain capital crimes that carry the potential of
18 a sentence of death. We are now not at that phase; we are in a
19 phase which we refer to as the guilt phase, whether or not the
00:23 20 defendant is guilty of the offenses charged, and that will be
21 the focus. You should not consider during this portion of the
22 trial any punishment that should be determined to be
23 appropriate. The question of punishment is entirely separate
24 and is not part of this first stage of the trial.

25 Let me repeat my cautions. During this, it is very,

1 very important that you do not talk among yourselves or with
2 other people about the substance of the evidence as it is
3 coming in. There will be a time for you all to do that but it
4 is not now. Of course you must avoid any discussion of the
5 matter with anyone else outside the court. People at home,
6 again, of course you can tell them that you're leaving to go to
7 jury duty, but you can't get into any of the details.

8 It's extremely important you avoid any contact with
9 other sources of information. As we've repeatedly emphasized,
00:25 10 no independent investigation, no Googling or looking at things.
11 The evidence that you will consider must be the same evidence.
12 You must all be focused on exactly the same evidence, and the
13 way to control that is to limit your consideration of anything
14 to do with the facts of the case to what is presented here in
15 the courtroom to you all sitting here as a jury.

16 So let me outline for you the way the trial will
17 proceed. As I'm sure you appreciate, there are longstanding
18 rules and traditions about how a trial moves forward and the
19 evidence is presented, and it breaks into some segments. In a
00:25 20 moment when I've concluded these introductory remarks, the
21 lawyers will have an opportunity to make what we call their
22 opening statements.

23 An opening statement is an opportunity to prepare you
24 for what you may hear in the evidence as it unfolds. It's a
25 summary of what the lawyers expect the evidence will include.

1 It's not necessarily an exhaustive summary of the evidence but
2 it will give you the gist of what the parties expect the
3 evidence to be.

4 The purpose is to give you some context so that as you
5 hear the evidence, witness by witness, piece by piece, you'll
6 be able to have some understanding of what it might mean.
7 You're not to make any conclusions about it as you draw it in,
8 but it will help you to follow the evidence a little bit if
9 you've got some general idea of what the overall picture is.

00:26 10 I like to suggest to jurors that you can think of the
11 opening as sort of the picture on the outside of the jigsaw
12 puzzle box. This is the way the lawyer thinks it should look
13 when all the pieces have been put together. They will probably
14 have different pictures. That's usually the case. It will be
15 up to the jurors to piece things together in their discussions
16 at the end of all the evidence and decide what is shown and
17 what is not shown. But the openings give you an opportunity to
18 follow the evidence a little bit by having some idea where they
19 may be going with it.

00:27 20 After the openings, the evidence will begin. The
21 openings themselves are not part of the evidence; they're
22 simply the lawyers' summary of what is to come. The evidence
23 will come from the witnesses who appear in the courtroom, swear
24 to tell the truth, and then answer questions that are put to
25 them by the lawyers, each side having an opportunity to ask

1 questions of each witness.

2 That question-and-answer format is an aspect of the
3 formality of a trial. We don't just have witnesses come in and
4 talk to you and say what they think you might like to know
5 about matters; rather, their attention is directed to
6 particular pieces of evidence or testimony by the lawyers. And
7 there are a number of reasons for that. One is simply
8 efficiency, that the lawyers, knowing what is important in the
9 case, can direct the witnesses to that matter, what is
00:27 10 important, and to leave out things that need not be said.

11 In addition, we follow principles of law that we refer
12 to generally as the law of evidence. In addition to procedural
13 rules, there are rules about the kind of evidence that may
14 properly be admitted in a trial such as this. Generally, the
15 law of evidence makes judgments about reliability of evidence
16 as a categorical matter, judging some things to be more
17 reliable, generally speaking, than others, and, therefore, more
18 preferable for consideration by a jury. Conversely, some
19 things are less reliable as a general matter and, therefore,
00:28 20 inappropriate for consideration by a jury. And so the law of
21 evidence embodies these principles and rules that govern
22 whether evidence may be admitted or not.

23 That's part of my responsibility as the presiding
24 judge, to make whatever rulings on legal points including
25 questions of law of evidence as the case proceeds. You'll see

1 it happening, and I'm sure you've seen it, if not in real
2 trials, in fictional ones. If a lawyer thinks that a question
3 calls for an answer that is not proper to be admitted under the
4 law of evidence, the lawyer will make an objection to that
5 question. If that happens, I'll rule.

6 If I sustain the objection, it means I agree that the
7 answer should not be in evidence and the witness won't answer
8 that question. If that should happen, don't try to answer it
9 yourselves. Don't try to guess what the answer might have been
00:29 10 if the witness had been permitted to answer. Just take it that
11 for whatever reason there's no evidence to that point, wait for
12 the next question and the answer to that because it, of course,
13 is the answers to the questions that constitute the evidence;
14 not the questions themselves.

15 On the other hand, I may overrule the objection and
16 the witness goes ahead and answers the question. That answer
17 then becomes part of the evidence, just like all the other
18 evidence you've had that was given without objection. An
19 objection isn't a signal that this is somehow really important
00:29 20 because they're objecting to it. That's not true necessarily
21 at all. And the reason is that the considerations that
22 underlie the rules of evidence have nothing to do with the
23 merits of this case. There's no meaning to be attached to an
24 evidentiary ruling as having some significance for any of the
25 substantive decisions you'll have to make about the issues in

1 the case. So don't look for any, because they're just not
2 there.

3 Most commonly I will rule immediately on the
4 objection. I'll understand it from the context. Sometimes
5 I'll invite the lawyers to come to the sidebar and we'll
6 discuss it briefly. I'll allow a brief argument about the
7 question and perhaps a proffer of what the answer is expected
8 to be. And we do that out of your hearing because if the
9 answer is ultimately excluded, we don't want you to have heard
00:30 10 it. When we do that, we will probably try to distract your
11 attention from hearing anything we say over there by playing
12 some music. So if you hear music start in the middle of the
13 case because we're going over there, don't be surprised; it's
14 part of the process of protecting the integrity of the process.

15 The presentation of evidence of course will be the
16 lengthiest part of the trial and will take some time, as you've
17 heard. During that we will allow you each to have a notebook,
18 personal notebook, and you may take notes on the evidence as
19 you go along. We provide this as a convenience to you. It's
00:31 20 not required that you do it. You assess your own comfort level
21 with it.

22 Some people find it helpful to take notes to jog their
23 memory later on, some people find it a distraction from
24 observing what's going on in the courtroom. And keep in mind
25 that we don't want your noses in the notebook so you're

1 forgetting to observe what's going on in the case. So try it
2 out. See what you find yourself is useful with the
3 note-taking. You don't have to do what your neighbor does. Do
4 what you think is suitable for your own purposes. Every night
5 we'll collect the notebooks and put them under lock and key,
6 and you'll get them again in the morning to resume. At the end
7 of the case your notes will be destroyed.

8 After the evidence has concluded, we'll proceed to the
9 next stages of the case. The lawyers will again have an
00:32 10 opportunity to address you. Now instead of previewing the
11 evidence, they'll be trying to summarize it for you and ask you
12 to evaluate it in a way, obviously, that is consistent with
13 their view of the case. Those are sometimes called the final
14 arguments or the closing statements. I'll have some very
15 detailed instructions in the law -- what the elements of each
16 of the offenses are that need to be found based on the evidence
17 in order to find the defendant guilty or -- and how you'll
18 proceed and consider the evidence and evaluate it. And then
19 you'll begin your deliberations. So those are the -- that's
00:33 20 the general format and outline of the proceeding.

21 I think the clerk has gone to get the notebooks, and
22 when he's back we'll distribute them and begin -- actually,
23 we'll wait for him to come back. You will not take notes
24 during the openings because the openings are not evidence. The
25 notebooks are only for the evidence in the case.

1 (Pause.)

2 THE COURT: You can distribute them after the
3 openings.

4 With that, then, we'll proceed to the next stage with
5 the opening statements. The government will begin.

6 MR. WEINREB: Good morning.

7 THE JURORS: Good morning.

8 MR. WEINREB: Nearly two years ago, on Marathon
9 Monday, the defendant, Jahar Tsarnaev, rounded the corner onto
00:34 10 Boylston Street and began walking towards the Boston Marathon
11 finish line. It was about 2:30 in the afternoon. The race had
12 started about six hours earlier, and the sidewalks were packed
13 with spectators. The Red Sox game had just ended, and people
14 were pouring out of Fenway Park, making the crowds even bigger.
15 There were people from all over the world and all walks of
16 life -- men, women, boys, girls -- all loudly cheering on the
17 runners. And because Marathon Monday falls on Patriots' Day,
18 the school holiday, there were plenty of families enjoying the
19 special day with their children.

00:34 20 But the defendant wasn't there to watch the race. He
21 had a backpack over his shoulder, and inside that backpack was
22 a homemade bomb. It was the type of bomb favored by terrorists
23 because it's designed to tear people apart and create a bloody
24 spectacle. It was a sealed pressure cooker about this wide and
25 this high, and it was filled with explosive powder and

1 thousands of pieces of tiny shrapnel: nails, tacks, and little
2 BBs. The purpose of that type of bomb is to shred flesh,
3 shatter bone, set people on fire, and cause its victims to die
4 painful, bloody deaths and permanent disfigurement.

5 The defendant's goal that day was to my maim and kill
6 as many people as possible, so he took his time figuring out
7 where to plant his bomb. He began walking slowly down towards
8 the finish line with his brother, Tamerlan, who was also
9 carrying a bomb in his own knapsack. They walked a little ways
00:36 10 together, and then they split up.

11 Tamerlan continued all the way down to the finish line
12 and planted his bomb there in a crowd of people. The defendant
13 waited a bit and then started walking in the same direction.
14 He decided to stop in front of a crowded restaurant called
15 Forum, and to place his bomb right behind a row of children who
16 were standing on a railing by a curb -- the curb watching the
17 race.

18 One of those children was an eight-year-old boy named
19 Martin Richard who was watching the race with his family. No
00:36 20 one noticed the defendant plant the bomb because there was
21 nothing out of the ordinary to see. He just got there, slipped
22 his backpack onto the ground, and stood there looking at the
23 backs of those children. He pretended to be a spectator, but
24 he had murder in his heart, although you wouldn't have known it
25 just to look at him.

1 The defendant looked and acted like a typical young
2 adult, but the evidence will show that he wasn't. He had a
3 side to him that he kept hidden, even from his closest friends.
4 When he was with his friends, he hung out and played video
5 games. But when he was by himself, he read terrorist writings
6 and listened to terrorist lectures. Those writings and
7 lectures convinced him that he should kill innocent Americans
8 in order to punish the United States for mistreating Muslims in
9 other countries. And by doing so, he thought he would earn a
00:37 10 place in paradise, which explains what happened next.

11 The defendant stood there for nearly four minutes
12 directly behind the row of children who were watching the race.
13 Dozens of people stood around him, and dozens more were behind
14 him in the Forum restaurant enjoying a meal with friends,
15 cheering on the runners, or just enjoying the day. Then when
16 the defendant had given his brother, Tamerlan, enough time to
17 get into place, he called Tamerlan on the phone and spoke to
18 him for about 20 seconds. About ten seconds later, Tamerlan
19 detonated his bomb. A few seconds after that, the defendant
00:38 20 walked briskly back the way he had come, leaving his own bomb
21 behind him on the ground. When he was a safe distance away, he
22 detonated the bomb by remote control.

23 The explosions from the two bombs were terrifying.
24 They made a defining roar and created fireballs several stories
25 high. The air filled with the smell of burning sulphur and

1 people's screams. Pieces of the pressure cookers and thousands
2 of pieces of tiny shrapnel were propelled with huge force in
3 every direction. Some of them landed hundreds of feet away.

4 The defendant's bomb exploded in the middle of a crowd
5 of people. Pieces of the pressure cooker and bits of shrapnel
6 tore through them, shredding their flesh and severing their
7 arteries. The explosion deafened many of them and set others
8 on fire. Some of them were blinded. Many had a leg or a foot
9 blown off their bodies, and some bled to death on the pavement
00:39 10 while the defendant ran away.

11 One person the defendant murdered that day was Martin
12 Richard. As I said earlier, he was one of the children
13 standing on the railing watching the race. Martin was eight
14 years old. He was at the marathon with his father, Bill
15 Richard; his mother, Denise; his six-year-old daughter [sic],
16 Jane; and his 11-year-old brother, Henry. They were all
17 standing together waiting for a family friend to cross the
18 finish line.

19 The bomb tore large chunks of flesh out of Martin's
00:39 20 body. As the smoke cleared, Denise Richard found her little
21 boy lying on the ground and tried to comfort him. She could
22 only half see him because the bomb had permanently blinded her
23 in one eye. Martin bled to death on the sidewalk as she looked
24 helplessly on. Bill Richard, who had been blown into the
25 street, came back to the curb and reached out to Jane to pick

1 her up off the sidewalk. When she tried to stand up, she fell
2 down again because her leg was no longer attached to her body.

3 Another person the defendant murdered that day is
4 Lingzi Lu, a student at Boston University. She was a
5 23-year-old known for her kindness and her passion for music.
6 She was at the marathon with her friend, Danling. They just
7 happened to be walking by the Forum restaurant when the bomb
8 went off. That blast knocked Danling to the ground. When she
9 opened her eyes, she saw a man in front of her missing his leg.
00:41 10 She looked down to see if her own legs were still there, and
11 she saw that her insides were coming out of her stomach, so she
12 used her hands to push them back in. She looked around to find
13 her friend and saw her lying a few feet away. Lingzi was
14 screaming in pain and terror, but Danling couldn't hear her
15 because the bomb had deafened her. Danling never saw her
16 friend again because Lingzi, like Martin Richard, bled to death
17 on the sidewalk.

18 A third person the defendant murdered that day was
19 Krystle Marie Campbell. Krystle was 29 years old. She was at
00:41 20 the finish line with her good friend, Karen Rand. They were
21 there to cheer on Karen's boyfriend, who was running the race.
22 Krystle was killed by the bomb that the defendant's brother set
23 off. It burned her skin, filled her with shrapnel, and opened
24 gaping wounds in her legs and torso. It also knocked her
25 friend, Karen Rand, to the ground and blew off Karen's leg.

1 Karen held Krystle's hand tight as the life drained out of her
2 body.

3 Now, even though the defendant's brother set off the
4 bomb that killed Krystle Campbell, the defendant is still
5 responsible for her death. That's because he and his brother
6 were partners in crime. They planned these crimes together,
7 and they carried them out together. The defendant knew that
8 his brother's bomb was going to kill people, just like he knew
9 his own bomb was. That's exactly what he wanted to have
00:42 10 happen.

11 As soon as those bombs went off, Boylston Street
12 erupted into chaos. The wounded lay on the sidewalk in pools
13 of their own blood, wondering if they were going to live.
14 Others fled the scene. But in the midst of the chaos, some
15 people sprang into action. Police officers, medical personnel,
16 family members and friends of the dead and dying, many of them
17 jumped in to offer aid. There were a lot of heroes that day,
18 and you'll hear from some of them.

19 What was the defendant doing while people were
00:43 20 frantically trying to save the wounded from bleeding to death
21 on the street? We know the answer because he was caught on a
22 surveillance tape. Just 20 minutes after he set off that bomb
23 on Boylston Street, while paramedics were still giving CPR to
24 Martin Richard in a futile attempt to try to save his life, the
25 defendant drove to the Whole Foods in Central Square and

1 purchased a gallon of milk. You'll see him on the surveillance
2 tape walking into the Whole Foods, going over to the milk
3 counter, shopping for the milk, choosing which one to buy,
4 going back to the counter, calmly paying for it, and walking
5 out of the store. You'll even see him come back a minute later
6 and decide to exchange that milk for a different type of milk.

7 And what did he do after that? While victims of the
8 bombing lay in the hospital and learned that they would have to
9 have their limbs chopped off to save their lives, the defendant
00:44 10 pretended that nothing had happened. He went back to UMass
11 Dartmouth, where he was enrolled as a sophomore. He hung out
12 with his friends and partied. He went to the gym and played
13 video games. He posted a message on Twitter that said, "I'm a
14 stress free kind of guy." He acted like he didn't have a care
15 in the world.

16 The defendant acted that way because he believed that
17 what he had done was good, was something right. He believed
18 that he was a soldier in a holy war against Americans and that
19 he had won an important victory in that war by killing Martin
00:44 20 Richard, Lingzi Lu, and Krystle Campbell. And he also believed
21 that by winning that victory, he had taken a step toward
22 reaching paradise. That was his motive for committing these
23 crimes.

24 How do we know that? We know it in part because the
25 defendant wrote out an explanation of why he committed these

1 crimes. The police found that writing when they arrested him,
2 and you will see it later on in court. This is part of what
3 the writing said: "I ask Allah to make me a shahied to allow
4 me to return to him and be among all the righteous people in
5 the highest levels of heaven. Allah Akbar." "Shahied" means
6 martyr, and "Allah Akbar" means God is great.

7 The defendant wrote, "The U.S. government is killing
8 our innocent civilians, but most of you already know that. I
9 can't stand to see such evil go unpunished. We Muslims are one
00:45 10 body. You hurt one, you hurt us all. The ummah is beginning
11 to rise. We are promised victory, and we will surely get it."
12 "Ummah" is a word that people with the defendant's beliefs use
13 to describe the Muslim people.

14 The defendant wrote, "Now, I don't like killing
15 innocent people. It is forbidden in Islam. Stop killing our
16 innocent people, and we will stop."

17 The defendant carried out an attack on the Boston
18 Marathon because he believed that the United States government
19 is the enemy of the Muslim people. He believed that punishing
00:46 20 America by killing innocent young women and children would
21 cause America to stop targeting Muslim terrorists overseas and
22 help win him a spot in heaven. And you will hear evidence of
23 how he acquired that belief. He acquired it by reading books,
24 listening to songs, and watching videos that were created by
25 other terrorists, and they convinced him that he should become

1 a terrorist too.

2 The defendant's transformation into a terrorist took
3 place over a year or two. In 2011, he started reading
4 terrorist writings and posting online messages about the
5 persecution of Muslims. In 2012, he started listening to
6 terrorist lectures and songs. He told one of his friends that
7 he had a plan to reach paradise. In 2013, he created an online
8 identity that he used to spread radical Muslim ideas. He said
9 that people don't take notice when Muslims die over there,
00:47 10 meaning overseas, but if something happens over here, meaning
11 in America, then everybody takes notice. He also said that he
12 knew how to make a bomb.

13 You will hear that the defendant had terrorist
14 writings, videos, and lectures on his laptop computer, on his
15 iPod and on CDs in his car. We will show you many of those
16 writings and videos during the trial, and you'll hear evidence
17 that reading those kinds of writings and listening to those
18 lectures, watching those videos, is a common way that young
19 adults like the defendant turn into terrorists themselves.

00:48 20 One of the things the defendant had on his computer
21 was a virtually complete set of *Inspire Magazine*. That is a
22 magazine published in English by a group that calls itself
23 al-Qaeda in the Arabian Peninsula. The goal of *Inspire*
24 *Magazine* is to do just that: to inspire young men like the
25 defendant to become terrorists and to encourage them to attack

1 western countries, regardless of whether they're associated
2 with a terrorist organization.

3 It's filled with stories of terrorists who punished
4 America by killing innocent people, and it treats them as
5 glorious heroes. It gives instructions on the best way to
6 commit attacks so as to terrify people and kill as many people
7 as possible.

8 One of the issues in *Inspire Magazine* that the
9 defendant had on his computer contained instructions for making
00:49 10 a bomb out of a pressure cooker filled with explosive powder
11 and shrapnel. It recommends placing it in a crowded area to
12 maximize its deadly effect. The defendant and his brother
13 began accessing those instructions around Christmas of 2012.
14 Later, the defendant's brother bought pressure cookers to hold
15 the explosive powder and remote-control cars that were turned
16 into remote-control detonators. They filled the bombs with
17 explosive powder emptied from ordinary fireworks, as well as
18 nails, tacks, and BBs to make them more deadly.

19 A few months before the marathon bombing, the
00:49 20 defendant got a 9-millimeter handgun. He told a friend of his
21 named Stephen Silva that he needed a gun, so Silva got him a
22 Ruger semiautomatic pistol with the serial number filed off.
23 Silva will be a witness in this case, and he'll testify about
24 giving the Ruger to the defendant.

25 It is clear that the defendant intended to use the

1 Ruger because on March 20th, 2013, just about a month before
2 the marathon attack, he and his brother drove to the Manchester
3 firing range in New Hampshire to practice shooting. The
4 defendant rented two 9-millimeter pistols, just like the Ruger,
5 and purchased four boxes of ammunition, and then he and his
6 brother spent about an hour on target practice.

7 After bombing the marathon on April 15th, the
8 defendant maintained his double identity. He acted normal
9 around his friends. He pretended to them that he hadn't even
00:50 10 been at the Boston Marathon, and he continued reading the
11 terrorist writings and listening to the terrorist lectures on
12 his computer. For example, you'll hear evidence that on April
13 16th, the day after the bombing, the defendant opened up the
14 copy of *Inspire Magazine* on his computer that contained
15 instructions for building pressure cooker bombs and pipe bombs;
16 and then you'll hear that a few days later, he and his brother
17 exploded several pipe bombs and another pressure cooker bomb,
18 this time in Watertown.

19 Now, I want to go back to April 15th and talk about
00:51 20 what happened after the bombings over the next few days on
21 Boylston Street. As soon as the bombs exploded, police
22 officers halted the marathon midway and everyone -- made
23 everyone leave the scene. Bomb technicians began checking for
24 additional bombs. Ambulances came and took the wounded to
25 hospitals. And then the long, painstaking process of gathering

1 evidence began.

2 Three consecutive blocks of Boylston Street were roped
3 off and treated as a crime scene. FBI agents and hundreds of
4 other federal, state, and local law enforcement officers donned
5 special clothing and began scouring the area for evidence.
6 Among all the blood and human remains, they found shredded
7 cloth from the backpacks, pieces of the exploded pressure
8 cookers, and wires and batteries from the remote-control
9 devices used to detonate them.

00:52 10 And they found hundreds of pieces of shrapnel, little
11 nails, tacks, and BBs. They found them on the street, they
12 found them inside buildings, on the tops of roofs, and ER
13 doctors found them on the bodies of the victims they were
14 treating at the hospital, in their hair, in their clothing, and
15 in their bloody wounds. The police also collected surveillance
16 tapes from businesses on Boylston Street and elsewhere, and
17 photos and videos from members of the public who had been there
18 watching the race.

19 Now, as I said earlier, the defendant exploded his
00:53 20 bomb right in front of a restaurant called Forum, and that
21 restaurant has a surveillance camera that is right over the
22 door of the restaurant, and it happened to be pointing directly
23 at the place where the defendant placed his bomb. The
24 surveillance tape shows the defendant walk up to that spot.
25 He's got a backpack slung over his shoulder. And the moment he

1 gets there, he dips his shoulder, and after that, you never see
2 the backpack on his back again. But photographs show that it's
3 at his feet.

4 It shows him stop right behind Martin Richard and the
5 other children who are lined up on the railing watching the
6 race. It shows him stand there looking at them and looking
7 over their heads at the runners. Then it shows him make the
8 phone call to his brother. A few seconds later, everyone in
9 the Forum snaps their head to the left, towards the finish
00:53 10 line, as the first bomb explodes. Almost immediately, the
11 defendant begins walking rapidly in the other direction. As
12 soon as he reaches a safe distance, his bomb explodes.

13 That video revealed that the defendant was one of the
14 bombers, but the FBI didn't know who the defendant was. They
15 had a face but not a name. So they started looking at all the
16 other surveillance tapes, seeing if they could find him walking
17 up to that spot. And they did find him, and they found him
18 walking with another man, who turned out to be the defendant's
19 brother, Tamerlan. Tamerlan also had a backpack on. So now
00:54 20 the FBI had two suspected bombers. They had two faces but
21 still no names.

22 Three days passed while the FBI and other law
23 enforcement officers worked around the clock trying to identify
24 who the two men in the video were. At the end of three days,
25 they decided it was time to ask the public for help. So on

1 Thursday, April 15th [sic], at 5 p.m., almost exactly three
2 days after the bombings occurred, the FBI published some of
3 those surveillance videos and still photos from the
4 surveillance videos on its website, and they had a press
5 conference where they asked members of the public to call in if
6 they had any idea who those two men were.

7 News stations broadcast those videos and those photos
8 all around the country and around the world. A few hours
9 later, at 8:45 p.m., the defendant got a text from his good
00:55 10 friend, Dias Kadyrbayev.

11 Dias texted, "You saw the news?"

12 The defendant texted back, "Yeah, bro, I did."

13 Dias texted, "For real?"

14 The defendant texted back, "I saw the news. Better
15 not text me, my friend. LOL."

16 Dias texted, "You saw yourself in there?"

17 The defendant didn't answer directly. He just texted
18 back, "If you want, you can go to my room and take what's
19 there." That's exactly what Dias did. He and two other of the
00:56 20 defendant's friends went to his dorm room at UMass Dartmouth.

21 They searched it, and they found a backpack containing
22 fireworks that had been partially emptied of their explosive
23 powder. They took that backpack, and they threw it into a
24 Dumpster to get rid of the evidence, but fortunately the police
25 later were able to recover it. They also took the defendant's

1 laptop computer and brought it back to their apartment in New
2 Bedford.

3 Meanwhile, the defendant and his brother went out in
4 search of another gun. They drove by the MIT campus, which was
5 close to their apartment, and they saw a police officer sitting
6 in his cruiser next to a building. The police officer was
7 named Sean Collier. He was a 27-year-old from Somerville.
8 Students loved him because he was a friendly guy and took an
9 active role in campus life.

00:57 10 A surveillance video shows what happened next. Now,
11 unfortunately, the surveillance camera that took this video was
12 very far away. It was on top of a very high building, the
13 distance from where the car was, and it was so far away that
14 the human figures in it appear tiny. It's impossible to see
15 their faces or exactly what they're doing with their hands.
16 Even so, it shows enough for you to be certain, in conjunction
17 with other evidence that I'll tell you about, that the
18 defendant and his brother killed Officer Collier.

19 The video shows two men walk through the courtyard and
00:57 20 round the corner where Sean Collier is sitting in his cruiser.
21 So they round one corner, walk all the length of the building,
22 walk around the corner right to the cruiser. As soon as they
23 reach the car, they open the door.

24 A few seconds later you can see a young man ride his
25 bicycle right by the cruiser. The man on the bike was an MIT

1 graduate student named Nate Harman. He'll testify that as he
2 rode by, he saw a man leaning into the driver's side of the
3 cruiser, and he startled him. The man looked up in surprise
4 and looked directly into Mr. Harman's face, and Mr. Harman's
5 description of the man matches the defendant exactly.

6 At the same time the video shows the two men standing
7 by the side of the car, a student working in an office that had
8 a window right above where the cruiser was parked called MIT's
9 version of 911 and reported hearing six possible gunshots from
00:58 10 below. Shortly after the call was made, the video shows the
11 two men, the defendant and his brother, run away from the car
12 back the way that they came. Five minutes later, fellow
13 officers responded to the scene and found Officer Collier dead
14 in his cruiser.

15 The evidence will show that the defendant and his
16 brother used the defendant's Ruger, the one that he had gotten
17 from his friend, to execute Officer Collier by shooting him in
18 the head at point-blank range twice in the side of his head and
19 once right between the eyes. They also shot him three times in
00:59 20 his right hand. Then they tried to steal his gun from his
21 holster, but they couldn't get the holster lock to open, so
22 they gave up, and they fled the scene.

23 You'll know they tried to steal his gun from his
24 holster because the holster had a two-stage lock to prevent the
25 gun from being pulled out by someone else. The first stage is

1 easy to open, but the second one isn't, especially if you're
2 not the person wearing the holster. When other officers found
3 Officer Collier in his cruiser, they saw that the first stage
4 of the lock had been opened, but the second was still closed,
5 and they also saw that the gun and the holster were covered
6 with blood, as if somebody had been yanking at it, while the
7 rest of his utility belt was clean.

8 Now, because the surveillance camera was so far away,
9 you can't see the defendant and his brother do the actual
01:00 10 shooting. So the video doesn't reveal whether the defendant
11 pulled the trigger, whether his brother pulled the trigger, or
12 whether they both did, but it doesn't matter. They both
13 murdered him. And other evidence, which I'll talk about in a
14 few minutes, leaves no doubt that they are the ones who killed
15 Officer Collier and that they did it with the defendant's gun.

16 After murdering Officer Collier, the defendant and his
17 brother got back into their Honda Civic, which was loaded with
18 additional bombs, another pressure cooker bomb, like the one
19 that had exploded on Boylston Street, and at least four pipe
01:01 20 bombs. Their plan was to drive to New York City, but they
21 needed a different car, one that couldn't be traced back to
22 them or the murder of Sean Collier, so they drove in to Boston
23 to find one.

24 About 20 minutes later, they found what they were
25 looking for: a young Chinese man named Dun Meng, who was

1 sitting in a leased Mercedes SUV next to the AutoZone in
2 Brighton reading a text message on his cell phone. The
3 defendant and his brother drove up in their Honda Civic, and
4 the defendant's brother got out. He went over to the passenger
5 side of Mr. Meng's car, and he knocked on the window, and he
6 signaled to Mr. Meng to roll it down. When Mr. Meng did, the
7 defendant's brother reached inside, opened the lock, opened the
8 door, and got into the car, and then he pointed the defendant's
9 gun in Mr. Meng's face.

01:01 10 He demanded that Mr. Meng give him all of his money,
11 and Mr. Meng did, but he only had \$40 on him. The brothers
12 wanted more, so the defendant's brother told Mr. Meng to start
13 driving, and the defendant followed in the Honda Civic. A
14 nearby surveillance camera captured both cars driving away from
15 the scene.

16 They kept driving until they got to a quiet block in
17 Watertown, and then they parked, one behind the other. The
18 defendant got out and transferred all of the bombs from the
19 Honda into the trunk of the Mercedes. Then he, himself, got
01:02 20 into the backseat of the Mercedes, and the three of them drove
21 to an ATM in -- a Bank of America ATM in Watertown Square.
22 When they got there, the defendant took Mr. Meng's ATM card,
23 demanded his password, and robbed him of \$800 by using the ATM
24 machine to withdraw it from Mr. Meng's bank account. That \$800
25 was still inside the defendant's wallet when he was arrested

1 the next day.

2 After robbing Mr. Meng, the defendant and his brother
3 drove Mr. Meng to a Shell station on Memorial Drive in
4 Cambridge. They got there about 12:15 a.m. The defendant and
5 his brother had murdered Sean Collier less than two hours
6 earlier, and their terrified carjacking victim was still inside
7 the car. Even so, the first thing the defendant did when they
8 got to the gas station was to leave his brother inside the
9 Mercedes with Mr. Meng and go inside the Shell station to buy
01:03 10 snacks. You'll see him shopping for those snacks on the Shell
11 station video. He takes his time. He's not concerned. He
12 makes sure he's getting exactly what he wants.

13 But then things took a bad turn for the defendant.
14 While he was inside the Shell station shopping for snacks,
15 Mr. Meng realized that this might be his last chance to escape
16 before the defendant and his brother have no longer any use for
17 him. So in a flash, while the defendant's brother's hands were
18 occupied programming the GPS, Mr. Meng undid his seatbelt with
19 one hand, opened the door with the other, jumped out of the
01:04 20 car, and sprinted across the street to the Mobil station.
21 You'll see him on a surveillance camera springing across the
22 street and entering the Mobil station. And when he gets there,
23 you'll see the terrified look on his face, and you'll hear it
24 in his voice on the 911 tape.

25 After Mr. Meng called 911, the police responded to the

1 Mobil station and they interviewed Mr. Meng. They got all the
2 information about the Mercedes, and they began tracking its
3 location in real time using the GPS system in the car. By that
4 time, the defendant and his brother had driven back up to that
5 block in Watertown where they had left the Honda Civic. The
6 defendant had gotten back into the Honda Civic, his brother
7 remained in the Mercedes, and they had begun driving back in
8 the direction of Boston in the two cars.

9 The GPS tracking system in the Mercedes revealed that
01:05 10 it was moving south on Dexter Avenue, which is a quiet,
11 residential street in Watertown. A Watertown police officer
12 named Joe Reynolds heard on his police radio that the Mercedes
13 was wanted in a carjacking, and he began driving north on
14 Dexter Avenue. He had no idea that the two people driving the
15 cars were the Boston Marathon bombers.

16 As Officer Reynolds drove north on Dexter, the
17 defendant and his brother were driving south. The defendant
18 was in the Honda. He was in the lead. The defendant's brother
19 was in the Mercedes. He was following. As the two cars drove
01:05 20 past Officer Reynolds, Officer Reynolds made a U-turn and began
21 following them.

22 The defendant decided to turn onto Laurel Street,
23 which is another quiet residential street in Watertown, and his
24 brother followed him. It was nearly one in the morning. The
25 houses lining both sides of the street were dark and quiet.

1 The street wasn't well lit. The defendant stopped his car in
2 the middle of the street and got out, and his brother followed
3 his lead and did the same. As soon as Officer Reynolds turned
4 onto Laurel Street to follow them, they fired a bullet through
5 his windshield, trying to kill him. Officer Reynolds backed up
6 a short distance, got out of his car, and began shooting back.

7 Another Watertown police officer, Sergeant John
8 MacLellan, was on the street within seconds. As soon as he
9 turned onto Laurel Street, the defendant and his brother tried
01:06 10 to kill him too. They shot at him with the defendant's gun
11 while he was still in his car. Rather than back up, he put his
12 car into drive, got out, and let it roll slowly down the street
13 towards the brothers so that he and Officer Reynolds could take
14 cover behind it. And that's what they did. They walked behind
15 it, shooting as they went.

16 The defendant and his brother did everything in their
17 power to kill those two officers. They shot at them with the
18 defendant's Ruger, and they began throwing pipe bombs at them.
19 Two of those bombs exploded within feet of the officers. Two
01:07 20 others failed to detonate. Eventually, the defendant hurled a
21 pressure cooker bomb at the officers. It exploded with a
22 thunderous boom and created a massive fireball. Shrapnel
23 rained down on the officers and blew in the homes on Laurel
24 Street where the residents were cowering in terror.

25 A third Watertown police officer, Sergeant Jeffrey

1 Pugliese, arrived on the scene. He ran around the backs of
2 some houses to get as close to the defendant and his brother as
3 he could. The defendant's brother saw Sergeant Pugliese in the
4 side yard of the house and began shooting at him. Sergeant
5 Pugliese just stood there and shot back. Eventually, the
6 defendant's brother ran out of ammunition. He began walking
7 rapidly down the street towards Officer Reynolds and Sergeant
8 MacLellan. Sergeant Pugliese ran after him. He tackled him
9 and tried to handcuff him. Officer Reynolds and Sergeant
01:08 10 MacLellan jumped in.

11 While they were doing that, the defendant got back
12 into the Mercedes, which was pointing away down the street,
13 turned it around, and began driving at the three officers at
14 top speed trying to mow them down. He must have known they
15 were trying to arrest his brother, but he cared more about
16 killing them than he cared about his brother's life.

17 Officer Reynolds and Sergeant MacLellan saw the car
18 coming. They jumped off and took cover and told Sergeant
19 Pugliese to do the same, but Sergeant Pugliese didn't. He
01:09 20 grabbed the defendant's brother by his belt and tried to drag
21 him out of the way of the coming Mercedes. At the last
22 possible second, when the Mercedes was almost on top of him,
23 Sergeant Pugliese rolled to the side. The defendant ran right
24 over his brother and dragged his body about 50 feet down the
25 street. He sideswiped Officer Reynolds' cruiser, which shook

1 his brother's body loose, and continued driving away at top
2 speed.

3 As he sped by, other officers who had responded to the
4 scene and were waiting down there at the end of the street,
5 began shooting at the Mercedes. One of them was an MBTA
6 officer named Richard Donohue. Officer Donohue was shot in the
7 thigh by a stray bullet. It severed an artery, and he began
8 bleeding heavily. Other officers tried to stanch the flow of
9 blood, but it was impossible. Officer Donohue lost so much
01:10 10 blood that he stopped breathing and nearly died. Fortunately,
11 paramedics arrived, quickly got him to a hospital where doctors
12 were able to save his life.

13 The defendant drove a few more blocks and then ditched
14 the Mercedes in the middle of the street. He made his way
15 through the quiet, sleeping neighborhood to a house with a
16 dry-docked boat in the backyard. The boat was a good size. It
17 was about 22 feet long, about 8 feet wide, and it was up on a
18 trailer, and it was covered with a tarp. It was still the end
19 of winter, and it was covered with a tarp to protect it from
01:10 20 the elements. It must have struck the defendant as a good
21 place to hide out while the police searched for him.

22 Although the defendant had been shot and was bleeding,
23 he still had his wits about him. He smashed the cell phone
24 that he had used to call his brother right before they
25 detonated the bombs. He also smashed his other cell phone. By

1 smashing those phones, he destroyed some of the evidence of
2 what he had done, such as text messages between him and his
3 brother that were stored on his phone. He also made it
4 impossible for the police to use the GPS devices in the phones
5 to figure out his location. Once he had smashed the phones, he
6 took out Dun Meng's ATM card, which he still had, and he tried
7 to hide it, along with the smashed phones, in a kind of ditch
8 by where the boat was. But, again, the police searched the
9 area and found it later.

01:11 10 Once he had destroyed and hidden the evidence, he
11 climbed into the boat and hid. Meanwhile, the police cordoned
12 off a whole section of Watertown where they knew the defendant
13 might be hiding, and they searched all night and all the next
14 day, but they couldn't find him. When they finally decided to
15 call off the search for the day, David Henneberry, the man who
16 owned the boat, went outside to check on it. Mr. Henneberry
17 saw that the tarp covering the boat was loose, and he climbed a
18 short ladder to investigate. When he lifted the tarp to look
19 inside, he saw the defendant lying there, so he went back into
01:12 20 his house and called 911.

21 The police showed up quickly and surrounded the boat.
22 Several officers saw what they considered suspicious movement
23 and fired on it. That triggered a barrage of shots at the
24 boat. Then hostage negotiators arrived and tried to talk the
25 defendant into surrendering. Eventually they succeeded. The

1 defendant climbed out of the boat, and the police arrested him.

2 That's when the police found the writing I mentioned
3 earlier, the one where the defendant explained that he had
4 bombed the marathon to punish America for mistreating Muslim
5 people. He had written that explanation in pencil on an inside
6 wall of the boat while he was hiding inside of it, and you will
7 see the writing itself, the pencil he used to write it, and
8 other evidence that was found in the boat.

9 Meanwhile, officers had been combing Laurel Street and
01:13 10 Dexter Streets for evidence. One of the first places they
11 looked was the Honda Civic that the defendant had been driving.
12 When the defendant escaped from Laurel Street in the Mercedes,
13 he left the Honda Civic behind. On the floor of the Civic, on
14 the driver's side, right beneath the defendant's feet where he
15 had been driving, officers found two bloody white gloves. DNA
16 analysis shows that the blood on those gloves came from Officer
17 Collier. That is one of the ways you will know that the
18 defendant and his brother are the ones who killed Officer
19 Collier.

01:13 20 Another piece of evidence found in the Honda was the
21 defendant 's key ring, which had a UMass Dartmouth tag on it,
22 and his car key, the same key he had used to drive the Honda to
23 Laurel Street. Those items also were bloody, and once again,
24 DNA analysis shows that the blood came from Officer Collier.
25 That's yet another way you'll know that the defendant helped

1 kill Officer Collier that night.

2 Officers also found the defendant's Ruger, a BB gun
3 that looks exactly like a Ruger, and 54 spent Ruger casings,
4 meaning shells from bullets that had been fired from the Ruger.
5 All of the Ruger casings were matched by a ballistics expert to
6 the defendant's Ruger.

7 Now, six Ruger casings were also found at the MIT
8 crime scene, three inside the cruiser and three outside of it.
9 A ballistics expert examined those, and they also matched the
01:14 10 defendant's Ruger. And that's yet another way you will know
11 that the defendant and his brother murdered Officer Collier
12 that night using the defendant's gun.

13 You're going to see all of the ballistics evidence,
14 you'll hear from the ballistics expert, and you'll hear from
15 the DNA expert who examined the gloves and the key ring.

16 Shrapnel from the bombs the defendant used on Laurel
17 Street and pieces of the pressure cooker were found everywhere.
18 They were inside people's cars, on their front lawns, in their
19 backyards, on their roofs, even inside their homes. Slugs from
01:15 20 the Ruger were also found inside people 's homes, some of them
21 embedded in their -- in their interior walls. We will show you
22 maps, diagrams, photographs of them.

23 Now, you've heard me talk a lot about the defendant's
24 brother, Tamerlan, but you won't be seeing him in the
25 courtroom. That's because the defendant killed him by running

1 him over with this Mercedes. Tamerlan's bullet wounds also
2 contributed to his death. But even though Tamerlan won't be in
3 the courtroom, this case involves him too. That's because he
4 and the defendant were partners. They agreed to do these
5 crimes together, and they carried them out together.

6 The judge will instruct you that when two people agree
7 to commit a crime together, they're guilty of conspiracy. And
8 the defendant is charged with three counts of conspiracy:
9 conspiracy to use a weapon of mass destruction, conspiracy to
01:16 10 bomb a place of public use, and conspiracy to destroy property
11 with explosives.

12 The defendant is also charged with many substantive
13 counts of using a weapon of mass destruction, arming a place of
14 public use, and destroying property with explosives. And he's
15 charged with many counts of using guns and explosives to commit
16 violent crimes. Even though he and his brother played
17 different roles in each of these crimes, they are both equally
18 guilty of committing them because they carried them out as
19 partners.

01:16 20 Now, what do I mean when I say they were partners? I
21 don't mean that they did exactly the same thing. That's not
22 required for the defendant to be guilty under the law. What I
23 mean is that each one played a role in committing the crime.
24 For example, the defendant -- the defendant planted one bomb at
25 the marathon, and his brother planted the other one. The

1 defendant got his -- got a gun from his friend, Stephen Silva,
2 and his brother stuck it in Dun Meng's face. The defendant
3 took Dun Meng's ATM card and password and robbed him of \$800.
4 The defendant's brother told Dun Meng where to drive. The
5 defendant threw bombs at the police in Watertown and handled
6 the ammunition while his brother fired shots at the officers.
7 And both brothers together murdered Officer Sean Collier and
8 tried to steal his gun.

9 So even though Tamerlan Tsarnaev is not here, we will
01:17 10 be offering evidence about his role in these crimes, but the
11 focus is going to be on the defendant. That's because this is
12 his day in court. He's the one the government has to prove
13 guilty, not his brother. It's important for you to hear all
14 the evidence against the defendant so that at the end of the
15 trial you have what you need to find him guilty. It's far less
16 important for you to hear all the evidence against the
17 defendant's brother. In the end, it doesn't matter what role
18 each of them played, so long as you find that they were
19 partners and carried out these crimes together.

01:18 20 Now, as you can tell from what I've said, there's a
21 lot of evidence in this case. Some of the witnesses are just
22 going to talk about how and where things were found. Others
23 will simply testify that things are what they appear to be. We
24 need to call those witnesses because you need to have
25 confidence in the evidence, but we'll do our best to streamline

1 its -- its introduction into evidence and make that go as fast
2 as possible, if we can.

3 I want to conclude just by telling you a bit about the
4 order in which we're going to present the government's case.
5 We'll start with the marathon bombings and the collection of
6 evidence at the marathon crime scenes. We'll show you some of
7 the surveillance video, photos and -- photos from the people
8 who were at the -- the marathon before the bombs went off that
9 the FBI used to identify the defendant and his brother as
01:19 10 suspects in the bombing.

11 Then we'll put on evidence of what the defendant did
12 in the days after the bombings and of the manifesto he wrote on
13 the inside wall of the boat. Next we'll put on evidence of the
14 events on April 18th and 19th, how the FBI published photos of
15 the defendant and his brother on their website and held the
16 press conference; how the defendant and his brother then
17 murdered Officer Collier, carjacked, kidnapped, and robbed Dun
18 Meng, and tried to kill police officers in Watertown with
19 gun -- with a Ruger and with bombs.

01:20 20 After hearing about all the evi- -- the events that
21 led up to the defendant's arrest, you'll hear about all the
22 evidence that was collected from the Watertown crime scene and
23 analyzed by the experts, including the bloody gloves, the
24 bloody car keys, the Ruger, and all the ballistics evidence.
25 You'll also hear about evidence collected from the defendant's

1 residence in Cambridge and from his dorm room at UMass
2 Dartmouth.

3 One of the most important pieces of evidence is the
4 defendant's laptop computer, the one that his friends took from
5 the dorm room. The police got that computer and analyzed it.
6 As with a lot of people, the defendant's computer is a window
7 into his life, especially into the part of him that he kept
8 mostly hidden from his friends.

9 You'll hear a lot of evidence about all of the
01:20 10 terrorist materials that were on his computer and the other
11 digital devices that he owned. And you'll hear about other
12 things that the defendant said and wrote that shed light on the
13 sources of his terrorist beliefs. Some of those are papers he
14 wrote for school, and some are things he wrote to friends and
15 emails and text messages and posted on social media.

16 You'll also hear from the medical examiners who
17 examined the bodies of the four people the defendant murdered.

18 MR. BRUENNER: If you could choose number 4, please.

19 THE COURT: I'm sorry?

01:21 20 MR. BRUENNER: If you could choose 4, please.

21 THE COURT: Do you want a feed?

22 Jurors in the back row, just as you see monitors in
23 the front row, there are between your seats a console. You can
24 lift up the monitor, and -- actually, it may not be at the very
25 end. I think you may have to look in front.

1 MR. WEINREB: Each of the medical examiners who
2 examined the people who died in this case will be testifying.
3 And they'll tell you that Sean Collier was killed by multiple
4 gunshot wounds to the brain. Krystle Campbell had blast
5 injuries to her head, neck, body, and limbs. Her back was
6 burned red; and her head, body, and legs were filled with
7 shrapnel. There were gaping wounds in her legs that had
8 drained virtually all of the blood from her body.

9 Lingzi Lu was cut, battered, and bruised. The bomb
01:22 10 that the defendant detonated blew large perforating holes in
11 her legs that caused her to bleed to death. Martin Richard was
12 only 4 feet, 5 inches tall, and he weighed only 70 pounds.
13 Because of his size and height, the bomb damaged his entire
14 body. The defendant blew large holes into Martin's chest and
15 abdomen, exposing his ribs and organs and eviscerating his
16 bowels. He blew Martin's arm nearly entirely off his body,
17 burned his skin, and drove BBs and nails into his legs. Martin
18 lost so much blood that he had virtually none left in his body
19 by the time he was brought to the morgue. He died at the scene
01:23 20 from his wounds.

21 In the end, the evidence will prove to you beyond a
22 reasonable doubt that the defendant committed all 30 crimes
23 that he is charged with. He murdered Martin Richard, Lingzi
24 Lu, Krystle Campbell, and Sean Collier. He used weapons of
25 mass destruction at the Boston Marathon to terrorize the

1 country and to influence American foreign policy. He used guns
2 and bombs in Watertown to continue his campaign of terror, and
3 he did it all because he believed that America needed to be
4 punished for killing Muslims overseas. He did it to advance a
5 cause that he believed in. And he did it because he thought it
6 would help secure him a place in paradise. That is why, at the
7 end of the case, we will ask you to find him guilty of all 30
8 counts in the indictment. Thank you.

9 THE COURT: Ms. Clarke?

01:25 10 MS. CLARKE: We meet in the most tragic of
11 circumstances, tragedy in the lives of the victims of the
12 bombings, lives that were lost and torn and shattered: the
13 loss of a precious eight-year-old boy, whose smile captured all
14 of our hearts; a young woman who -- with an infectious laugh,
15 who was always there for her friends and her family; a young
16 graduate student whose passion for music was so clear, and she
17 embraced Boston as her home away from home; and a very fine
18 young police officer whose lifelong dream was to protect and
19 serve.

01:25 20 The circumstances that bring us here today still are
21 difficult to grasp. They're incomprehensible. They're
22 inexcusable. You just heard about the devastation, the loss,
23 and the unbearable grief, and we're going to see it, feel it,
24 and agonize with every witness who comes to talk about what
25 they saw, they felt, and they experienced and what happened to

1 them and to those that they love.

2 For the next several weeks, we're all going to come
3 face to face with unbearable grief, loss, and pain caused by a
4 series of senseless, horribly misguided acts carried out by two
5 brothers: 26-year-old Tamerlan Tsarnaev and his younger
6 brother, 19-year-old Jahar.

7 The government and the defense will agree about many
8 things that happened during the week of April 15th, 2013. On
9 Marathon Monday, Tamerlan Tsarnaev walked down Boylston Street
01:27 10 with a backpack on his back, carrying a pressure cooker bomb,
11 and put it down in front of the Marathon Sports near the finish
12 line of the marathon. Jahar Tsarnaev walked down Boylston
13 Street with a backpack on his back carrying a pressure cooker
14 bomb and placed it next to a tree in front of the Forum
15 restaurant. The explosions extinguished three lives. They
16 unalterably injured and devastated many others.

17 After their pictures were on television and on the
18 Internet, Tamerlan and Jahar went on a path of devastation the
19 night of April the 18th, leaving dead in their path a young MIT
01:28 20 police officer and a community in fear and sheltering in place.
21 Tamerlan held an unsuspecting driver, Dun Meng, at gunpoint,
22 demanded his money and compelled him, commanded him, to drive
23 while Jahar followed behind.

24 The evening ended in a shootout. You've heard about
25 it. Tamerlan walked straight into a barrage of gunfire,

1 shooting at the police, throwing his gun, determined not to be
2 taken alive. Jahar fled, abandoned a car, and was found hiding
3 in a boat.

4 There's little that occurred the week of April the
5 15th -- the bombings, the murder of Officer Collier, the
6 carjacking, the shootout in Watertown -- that we dispute. If
7 the only question was whether or not that was Jahar Tsarnaev in
8 the video that you will see walking down Boylston Street, or if
9 that was Jahar Tsarnaev who dropped the backpack on the ground,
01:29 10 or if that was Jahar Tsarnaev in the boat -- captured in the
11 boat, it would be very easy for you: It was him.

12 So you might say, why a trial?

13 Now, you've heard several instructions, and when we
14 sat in this courtroom at the table -- you may remember that --
15 the judge talked to you about how this is a capital trial. The
16 government has elected to seek the death penalty, and in a
17 capital trial there are two phases --

18 MR. WEINREB: Objection, your Honor.

19 MS. CLARKE: -- one in which --

01:30 20 THE COURT: Overruled. Go ahead.

21 MS. CLARKE: -- one in which the jury makes a
22 determination of guilt and one in which the jury makes the
23 determination of the appropriate penalty.

24 The indictment in this case is not that simple. It's
25 30 counts. You heard the counts described. It's 74 pages

1 long. There are complicated federal charges involved. And
2 there will be much for you to analyze and decide.

3 But the essence of the charges are four sets of
4 criminal acts: the bombings at the marathon that killed three
5 people and injured many others, the murder of Officer Collier,
6 the carjacking, and the shootout in Watertown.

7 We do not and will not at any point in this case
8 sidestep -- attempt to sidestep or sidestep Jahar's
9 responsibility for his actions, but the indictment alleges, and
01:31 10 the prosecutor talked with you about why, and we think the
11 question of why is important, and this is where we disagree.

12 We have a different answer to this question: What
13 took Jahar Tsarnaev from this (indicating), Jahar and his
14 brother -- what took Jahar Tsarnaev from this (indicating) to
15 Jahar Tsarnaev and his brother with backpacks walking down
16 Boylston? What took Jahar Tsarnaev from this to this
17 (indicating)?

18 The government has told you their answer to the
19 question of why, and we ask you to look further. Clearly,
01:32 20 Tamerlan Tsarnaev became obsessed with violent Islamic
21 extremism. He became increasingly religious in a radical way.
22 He traveled to Russia in -- for six months in 2012 and explored
23 violent jihad with people over there. He became aggressively
24 obsessed with talking about Islam because of his radical views
25 and his insistence that people accept them and agree with them.

1 He disrupted services at the mosques here in Boston where he
2 once fit in. It was Tamerlan Tsarnaev who self-radicalized.
3 It was Jahar who followed him.

4 The evidence will show that Tamerlan planned and
5 orchestrated and enlisted his brother into these series of
6 horrific acts. Tamerlan Tsarnaev did the Internet research on
7 the electronic components, the transmitter and the receiver
8 you'll hear more about, for the two bombs, and he bought them.
9 Tamerlan Tsarnaev had the Russian-translated version of how to
01:34 10 build a bomb on his computer. Tamerlan bought the BBs that
11 were in the shrapnel that were in the pressure cooker and the
12 pipe bombs. Tamerlan bought the pressure cookers. Tamerlan
13 bought the fireworks that went into making the bombs. Tamerlan
14 bought the ammunition. Tamerlan bought both of the backpacks.
15 Rubber gloves with explosive residue on them were found in
16 Tamerlan's car. Tamerlan led the way down Boylston Street.
17 Tamerlan shot and killed Officer Collier. Tamerlan pointed the
18 gun at Dun Meng, demanded his money, commanded him to drive
19 away, telling him, "I just killed a police officer."

01:35 20 You'll hear evidence about computers and the
21 electronic devices, phones, hard drives that were seized in
22 this case, and it will show that Tamerlan spent much of his
23 time on the Internet in death and destruction and images of
24 carnage in the Middle East. Make no mistake, Jahar Tsarnaev's
25 computer had many of the materials that the prosecutor told you

1 about: *Inspire Magazine*, "Join the Caravan," a number of
2 extremist materials that you'll hear about. But there will not
3 be any evidence that Jahar downloaded those materials as if he
4 were searching the Internet to find them.

5 The earliest traces of any extremist materials go back
6 to a thumb drive, a jump drive. You know what I'm talking
7 about? You stick in the computer and you transfer files. The
8 earliest traces of the extremist materials traced back to this
9 thumb drive that has never been found, but forensics can tell
01:36 10 you about it. The last traces of attachment -- when you stick
11 it into the computer and pull it out, the attachment into the
12 computer -- were into Tamerlan's laptop, Jahar's laptop, and a
13 desktop computer that was at the Norfolk Street apartment where
14 Tamerlan and his wife and daughter lived, where the family had
15 lived. The last known attachment was, then, the day that
16 Tamerlan left for Russia for six months in 2012.

17 So as you hear the computer evidence, please ask:
18 What's the source of the document? Where else was it? Who
19 else had it? Where did it come from? Can I know by the fact
01:37 20 that it's on there who put it there and why?

21 An analysis of the computer evidence will, at
22 baseline, show that both Tamerlan and Jahar's computers had
23 this library of extremist materials, but the evidence will also
24 show you that, while Tamerlan Tsarnaev was looking and immersed
25 in death and destruction and carnage in the Middle East, Jahar

1 spent most of his time on the Internet doing things that
2 teenagers do: Facebook, cars, girls. The evidence will also
3 help point you in the direction of understanding the flow of
4 the materials: who got what first, who got the most, and who
5 had the most.

6 The evidence will not establish, and we will not
7 argue, that Tamerlan put a gun to Jahar's head or that he
8 forced him to join in the plan, but you will hear evidence of
9 the kind of influence that this older brother had.

01:38 10 MR. WEINREB: Objection, your Honor.

11 MS. CLARKE: During the period of time --

12 THE COURT: Very limited evidence, if that, but go
13 ahead.

14 MS. CLARKE: Thank you, your Honor.

15 During the period of time when Tamerlan was becoming
16 more radical and traveling to Russia and identifying with
17 violent jihad, the evidence will show you what was happening
18 with Jahar. His parents: his dad, Anzor; his mother,
19 Zubeidat --

01:38 20 THE COURT: I think this is -- yeah, I think the
21 family history is not appropriate, as I previously indicated.

22 MS. CLARKE: His parents left and moved back to
23 Russia. He was a student at UMass Dartmouth, but things were
24 not going very well. His grades were plummeting; he wasn't
25 going to class; and he was in danger of failing out of school.

1 And Jahar, in one of those tough times of adolescence, as we
2 all know, became much more vulnerable --

3 MR. WEINREB: Objection, your Honor.

4 MS. CLARKE: -- to the influence --

5 THE COURT: No, go ahead.

6 MS. CLARKE: -- of someone that he loved and respected
7 very much: his older brother.

8 You'll see from the evidence that Tamerlan had a
9 special kind of influence dictated by his age, their culture,
01:39 10 and Tamerlan's sheer force of personality. They committed the
11 acts in April of 2013 that led to death and destruction, and
12 they are inexcusable and for which Jahar must be held
13 responsible. But he came to his role by a very different path
14 than suggested to you by the prosecution: a path born of his
15 brother, created by his brother, and paid by his brother. And
16 unfortunately and tragically, Jahar was drawn into his
17 brother's passion and plan, and that led him to Boylston
18 Street.

19 The government talked to you about writings that were
01:40 20 in the boat where Jahar was found hiding and where he had found
21 a pencil, and those writings are very important to read in
22 their entirety. And you'll see them. You'll get to read them.
23 But essentially what Jahar wrote was, first, he expressed that
24 he was jealous of his brother who had achieved martyrdom and
25 his wish that he would as well. He wrote that he perhaps

1 guessed that he was alive so that he could shed some light on
2 their motives, and he wrote words that he had read and
3 heard -- read and heard -- that the United States was
4 responsible for the suffering of Muslims around the world.

5 We ask you to carefully evaluate the testimony -- and
6 there will be testimony about these writings, not just the
7 writings themselves -- but about the writings inside the boat,
8 where they came from, and how deeply rooted they may or may not
9 be.

01:41 10 And at the end of this first phase of the case, we
11 think that you will have the evidence that you need to make the
12 decisions about the 30 counts, about the four sorts of --
13 essence of the criminal charges. We think that you will have
14 the evidence that you need to weigh and analyze and make the
15 decision in the first phase. But there will be questions that
16 we cannot answer now. There will be questions that we ask you
17 to carry over to the second phase, as the judge has explained.

18 When we talked to you in voir dire around this table
19 centered in the courtroom, the government, the defense, the
01:42 20 Court was here. Most of you acknowledged that you knew
21 something about this case. And most of you said -- or many of
22 you said that you had seen images of devastation, and many of
23 you knew about certain events --

24 MR. WEINREB: Objection, your Honor.

25 MS. CLARKE: -- and people whose lives --

1 THE COURT: Go ahead.

2 MS. CLARKE: -- were changed.

3 But none of you would be sitting here today, right
4 now, had you not convincingly and with conviction told us that
5 you can remain open through this phase, that you can hold your
6 questions throughout the trial, and that you can remain open --
7 your hearts and minds open to thinking about the evidence all
8 the way.

9 Witnesses -- many witnesses are about to start to be
01:43 10 called, some who work in forensics, some police officers who
11 risked their lives, a number of first responders who cared for
12 victims, a number of victims who were injured, and survivors,
13 eyewitnesses, people that lost loved ones. We're all going to
14 see and listen to their testimony with heavy hearts.

15 Holding your assurances to us that you can hold your
16 minds open to not only listening to the who, what, where, and
17 when, but to the how and why, those assurances are going to be
18 tested and going to be very difficult promises to keep.
19 Holding the questions that you have that can't be answered in
01:44 20 this phase, holding them open -- your hearts and minds open
21 until the second phase will not be an easy task, but that's
22 what you promised when you swore your oath as jurors. That's
23 what the judge expects. That's what our system of justice
24 expects. It's going to be a lot to ask of you to hold your
25 minds and hearts open, but that is what we ask.

1 Thank you.

2 THE COURT: Jurors, as we will customarily do as the
3 case goes on, about midmorning we'll take a little break so
4 people can tend to personal needs. We'll do that now. We'll
5 take about a 15-minute break and then come back and begin.

6 Let me tell you, you've heard no evidence yet. You've
7 heard the opening statements. I told you they're not evidence.
8 We'll come back and we'll begin the presentation of evidence.

9 We'll be in recess.

01:45 10 THE CLERK: All rise for the Court and the jury.
11 Court will be in recess.

12 (The Court and jury exit the courtroom and there is a
13 recess in the proceedings at 11:02 a.m.)

14 THE CLERK: All rise for the Court and the jury.

15 (The Court and jury enter the courtroom at 11:28 a.m.)

16 THE COURT: All right. You may all be seated.
17 Jurors, just write your juror number on the front of the book.
18 That's how we'll identify them. All right. We're ready to
19 proceed with the evidence. Mr. Chakravarty.

02:13 20 MR. CHAKRAVARTY: Your Honor, the government calls its
21 first witness, Mr. Thomas Grilk.

22 THOMAS GRILK, duly sworn

23 THE CLERK: Have a seat. Please state your name, and
24 spell your last name slowly for the record.

25 THE WITNESS: My name is Thomas Grilk, G-R-I-L-K.

1 DIRECT EXAMINATION

2 BY MR. CHAKRAVARTY:

3 Q. Good morning, Mr. Grilk.

4 A. Good morning, sir.

5 Q. Can you please tell the jury where you work?

6 A. I work at the Boston Athletic Association.

7 Q. And what is your role there?

8 A. I'm the executive director.

9 Q. And what is the Boston Athletic Association?

02:14 10 A. The Boston Athletic Association is an organization that
11 was formed in 1887 to promote health and fitness. It has
12 existed over that period of time to the present day with that
13 as its principal aim.

14 Q. I assume you have not been affiliated with the
15 organization since then?

16 A. My affiliation is briefer, yes. I became a member of the
17 Boston Athletic Association in 1987. I had been affiliated
18 previously as -- I had first run the Boston Marathon three
19 times: in 1976, '77 and '78. In 1979 I became the finish line
02:15 20 announcer at the marathon, which was my first actual connection
21 with the event and the organization.

22 In 1987 I became a member of the BAA; in 1990, a member of
23 its board of governors; in 1995, a vice president of the BAA;
24 and then in 2003, I became the president of the BAA, and held
25 that role until 2011, when I became the executive director.

1 Q. Sir, can you describe --

2 THE COURT: Excuse me. Mr. Grilk, would you just move
3 the microphone up a little bit so you're speaking a little more
4 directly into it?

5 (Witness complies.)

6 THE COURT: Thank you.

7 BY MR. CHAKRAVARTY:

8 Q. Can you describe the role and responsibilities of the
9 executive director of the BAA?

02:16 10 A. The executive director is the person who is in charge of
11 day-to-day activities, is the senior executive officer for the
12 conduct of the business of the BAA.

13 Q. Now, can you describe the different types of activities
14 that the BAA operates in?

15 A. The BAA operates in three principal areas: Number one,
16 best known, is the conduct of running events, racing events;
17 most notably, the Boston Marathon every year. In addition to
18 that, large, mass-participation races involving thousands of
19 runners at three other distance: five kilometers, ten
02:16 20 kilometers and a half marathon.

21 The second principal area of activity is community service
22 aimed, to a great deal, at kids, fitness activities and
23 competitive activities for school-aged children: cross-country
24 events in the fall, relay events in the springtime, around the
25 time of the marathon, and training courses that support those.

1 The third area is the development of high-performance
2 athletes, high-performance runners now. In the beginning of
3 the BAA, it was an organization that looked to many sports but
4 focused on track and field. When the Olympic Games were
5 revived in Athens in 1896, it was the Boston Athletic
6 Association that sent a majority of the U.S. team. So the
7 development of high-performance track-and-field athletes has
8 been a part of the BAA for a long time. And we have revived
9 that rather recently, hiring one of the world's preeminent
02:18 10 distance coaches to reinvigorate that part of what we do.

11 So those are the three areas in which we operate.

12 Q. And let's talk about the Boston Marathon specifically.
13 When did the BAA first host the Boston Marathon?

14 A. The Boston Marathon was first conducted in 1897. In 1896,
15 when BAA athletes went to Athens for the revival of the Olympic
16 Games, one of the events that was contested there was a
17 marathon: a run from the Plains of Athens -- Plains of
18 Marathon into Athens. And BAA members brought that idea back
19 with them, and in 1897 organized the first Boston Marathon.

02:18 20 And it has been conducted annually ever since.

21 Q. And what was the general layout of the course back then?

22 A. The course is largely unchanged since 1897. It's a little
23 bit longer now because the marathon distance was standardized
24 in the 1920s at 26 mile, 385 yards, the distance we know today.
25 It first started in Ashland, Mass., and followed the route that

1 it follows today. When the course had to be lengthened to meet
2 the standard distance for a marathon, that moved the start out
3 to Hopkinton, Massachusetts, which is where it starts today.

4 Q. And so in describing the history of the marathon, what
5 else has changed over the years in terms of the layout or the
6 organization of the marathon?

7 A. Well, as I say, the course itself hasn't changed really
8 very much, but the size of the race, I suppose, is the most
9 notable change. It has grown from 15 runners in 1897 to tens
02:19 10 of thousands each year now. If we go back to around the year
11 2000, it had grown to about 17,000 runners, and over the
12 ensuing decade grew to 27,000. And for a number of years, from
13 2010 to 2013, it was about 27,000 runners. So it is a much
14 larger event than it once was.

15 Q. How would you describe the significance of the Boston
16 Marathon?

17 A. The marathon has a different significance, I'm sure, for a
18 great many different people. For runners, it is the only
19 marathon outside of the Olympic Games and the world
02:20 20 championships for which one needs to qualify in order to run,
21 for the most part. For in excess of 80 percent of the field,
22 it is necessary for somebody to have run another marathon
23 somewhere else, and done it in a time standard that is set for
24 their age and gender. So it's an aspiration for a great many
25 people. And the qualifying standards are difficult, so it's a

1 challenge for someone to do, and it is seen as quite an
2 accomplishment by people who do it.

3 The significance is different for others. There are
4 people who come out every year to work on the race, to
5 volunteer. There are between 8500 and 10,000 people, depending
6 on field size, who come out and volunteer each year. And many
7 of them come back year after year. There's a great commitment
8 to it there.

9 For people who live along the route, it is a day to come
02:21 10 out and have one of the first days of spring when one can get
11 outdoors and perhaps cheer for an event and for some athletes
12 that are going by their door.

13 Q. And what day of the year does the marathon occur?

14 A. It falls on Patriots' Day, which is -- which falls on the
15 third Monday in April each year. It is a Massachusetts
16 holiday, so schools are out and many people are off work. So
17 it's a day when people have the opportunity to come out and
18 watch if they wish.

19 Q. And is there a significance of it being on Patriots' Day?

02:22 20 A. It was -- the Boston Marathon, officially the BAA Boston
21 Marathon, was originally known by the name America's Marathon.
22 And I think -- although I wasn't there for it, I expect that it
23 was chosen to coincide with Patriots' Day, in part, because
24 that was the day that honored the Battle of Lexington and
25 Concord. The notion of American freedom and let's find another

1 way to celebrate that day, and that's when the marathon was
2 selected for that date.

3 Q. You mentioned that it was one of the -- the Boston
4 Marathon is one of the few that requires a qualification. Are
5 there other distinguishing aspects of the Boston Marathon
6 versus other marathons around the world?

7 A. Well, it is among the largest and it is also one that
8 attracts some of the finest competitors in the world. So it is
9 a combination of being an elite race with professional runners
02:23 10 competing for prize money, as well as a mass-participation race
11 for a great many people, for those who are able to qualify.
12 And there are very few such races around the world that have
13 that combination of size and high-performance participation.

14 Q. Can you describe a little bit about what that balance is,
15 the ratio is of competitors in terms of whether they're elite
16 runners or just competitive runners who are running for time or
17 other runners?

18 A. The number of elite runners is rather small. So each year
19 for the men's and women's open division, the people who are
02:24 20 competing for prize money, there are 15 to 20 in each of those
21 categories who might have some chance, not necessarily of
22 winning but of winning some money. Maybe 30 would have an
23 opportunity to win money. There's a wheelchair competition as
24 well, and there is a slightly smaller number of elite athletes
25 competing for money there.

1 About 80 percent of the field, a little more than that, is
2 made up of people who have come in through open registration,
3 which is to say that they have run another marathon in the
4 past, and within the preceding 18 months or so, that meets the
5 qualifying time for their age and gender.

6 About half of the rest of the field is made up of charity
7 runners who are running either in the charity program operated
8 by the BAA or that operated by our principal sponsor, John
9 Hancock. Other runners who are in that additional percentage
02:25 10 come from running clubs here, from cities and towns along the
11 way, international runners coming through tour groups. In
12 general, many of the people who are instrumental in allowing
13 the marathon to go forward by providing that assistance, it
14 seems fair that they should have some opportunity to designate
15 some of the people who will run.

16 Q. So just on that point, do you -- can you describe
17 generally what that course is from Hopkinton to Boston?

18 A. It is just over 26 miles, or just over 42 kilometers.
19 Hopkinton resides about 490 feet above sea level, so people
02:25 20 start on the course at a relatively high point and run down a
21 steep hill and then run through -- from Hopkinton through
22 Ashland into Framingham. In Hopkinton, there's a considerable
23 crowd of spectators at the very start. As the race then moves
24 beyond Hopkinton, it is a more -- the course is a more -- has a
25 more rural character to it. So the number of spectators is not

1 as great going through the first part of Hopkinton after the
2 start and then through Ashland.

3 It moves then into Framingham and Natick where it is a
4 more suburban set of communities. There are more spectators
5 along the road. It goes from Natick into Wellesley. In
6 Wellesley the number of spectators rises considerably, most
7 famously, perhaps, as the runners pass through Wellesley
8 College where the students come out in great numbers to
9 encourage runners, then through Wellesley Center where a great
02:26 10 number of people come out to watch.

11 It then -- the course then passes past what we think of
12 here as Route 128, I-95, and gets into a series of hills.
13 There are four major hills that the runners have to cross in
14 the city of Newton, most famously Heartbreak Hill which leads
15 up to Boston College. The number of spectators is, if
16 anything, greater as the runners come through Newton and as
17 they get to Heartbreak Hill, which is at about 21 miles coming
18 up to the buildings at Boston College. The crowds are very,
19 very dense.

02:27 20 The race then goes down from that hill through Brookline,
21 where the crowds are very thick, and finally comes through
22 Kenmore Square in Boston, onto Commonwealth Avenue, right onto
23 Hereford Street, left onto Boylston Street, which is where the
24 finish is. The crowds in Boston are very dense, and the number
25 of people and the noise that they make at the finish is

1 considerable, both because there are a lot of people there and
2 because they are now in an urban setting with large buildings
3 around them.

4 Q. Can you describe a little bit about the makeup of the
5 spectating population of the marathon as it varies across the
6 course?

7 A. The spectators who are there reflect the diversity of
8 their communities through which the race passes. For much of
9 the first part of the race, probably the first 20 miles or so,
02:28 10 the spectators in the main are people who live there, people in
11 those towns. They are people, in many cases, who have been
12 coming for many years. Their parents may have been out as
13 spectators at the race; their grandparents may have been out
14 there.

15 As the race gets more toward Boston College, then the
16 student participation in spectating goes way up. And as the
17 race then goes down into Brookline and into Boston, there are
18 more -- many local people are there, but also visitors from
19 other places. Marathoners come from many states -- from all
02:29 20 states and many countries. They bring family members with
21 them. There are a lot of people who are students here or
22 people who are working in Boston who will come out to watch the
23 race.

24 So there is a diversity to the spectators that, as I say,
25 reflects where the race is being run.

1 Q. What kind of interaction do spectators have with
2 participants in the race?

3 A. They express a great deal of enthusiasm for the runners in
4 the race. For those who are running -- it's been a long time
5 since I have, but even going back that far, I remember how
6 inspiring it is to have people cheering for you as you are
7 running. It is exciting. It is exhilarating.

8 For the spectators, it is -- it's a chance to come
9 outdoors in the springtime. It's a chance for them to cheer a
02:30 10 little bit. And they come out and, when necessary, take care
11 of runners. So if, for example, we have, as we did in 2012, a
12 very warm day, in addition to the hydration stations that we
13 have along the way on the course -- and there are hydration
14 stations every mile along the way -- in addition to that,
15 people who live along the course will bring out water and ice
16 and orange juice and fruit, and little children will have
17 orange peels that they give to runners. And it leads to a very
18 heightened degree of interaction between the spectators and the
19 runners.

02:30 20 Q. Now, does the marathon have a significant financial impact
21 on the area?

22 A. Each year the Greater Boston Convention & Visitors Bureau
23 does an analysis, an estimate of the economic impact of the
24 marathon, and publishes that. In 2012 the number that they
25 published was approximately \$137 million; for 2013 it was a bit

1 more than that. I think \$142 million.

2 Q. And is there an estimate that the BAA uses for how many
3 people come into Boston because of the marathon?

4 A. It's difficult to -- well, the connection at the Visitors
5 Bureau has a formula they use. I don't know precisely what it
6 is, but they look at the number of runners and decide how many
7 people will be there; they look at media people who come in,
8 those who are attracted to cover the race, and they have a
9 formula that they use to come up with their economic impact
02:31 10 study.

11 It's difficult for us to be able to say exactly how many
12 spectators there are along the way. There is no way to count
13 them. The estimate we have used is that in a year when the
14 weather is favorable and a lot of people come out, there are
15 perhaps half a million people who line the course.

16 Q. Can you describe the diversity of places from which
17 runners come to participate in the race?

18 A. Well, certainly all 50 states in the United States are
19 represented in the marathon field. About 20 to -- there are at
02:32 20 least 40 percent who are from outside Massachusetts and New
21 England. All states are represented. And there are runners
22 from many countries. About 18 percent of the field is
23 international. So the rest are domestic from various places
24 around the U.S.

25 Q. And approximately how much does it cost to put the

1 marathon on?

2 A. For us at the Boston Athletic Association, the amount that
3 we spend in order to put on the race in sort of a normal year,
4 going back to 2012 or 2013, is in the \$7 million range;
5 however, there are contributions that come from others that go
6 beyond that. So that, for example, another of our sponsors,
7 Adidas, provides jackets to all the volunteers, provides shirts
8 to all of the athletes who are competing; Poland Spring
9 provides water; Gatorade provides hydration beverages of
02:33 10 theirs. Others provide other things. John Hancock provides
11 assistance in various ways.

12 So I know what we spend. I don't have a number for
13 everything that goes into it, but it is a number more millions
14 of dollars.

15 Q. And so the BAA has relationships with various sponsors?

16 A. We do. We have a principal sponsor, which is John Hancock
17 Financial Services here in Boston. That is a relationship that
18 is now 30 years old. The second largest sponsor is Adidas.
19 That's a 27-year relationship. And there are a number of other
02:34 20 significant sponsors with whom we work.

21 Q. What about charities? Are there relationships with
22 charities that the BAA has?

23 A. There are. The most formal relationships with the
24 charities are conducted by the BAA and by John Hancock. We
25 each have a charity program in the BAA program. We have about

1 30 charities in any given year with whom we work. They receive
2 approximately 15- to 1600 entries that they can distribute to
3 people whom they select to raise money for that charity.

4 John Hancock has a charity program involving approximately
5 a thousand runners. They have more charities in that program.
6 They have more than a hundred charities with whom they work,
7 and the charities are able to select whomever they want. They
8 generally require a fund-raising minimum, generally, over
9 recent years, in the realm of four to five million dollars.

02:35 10 Then at the end, after the race is over, the charities all
11 report back. And in the realm of 2012-2013, the amount raised
12 in the aggregate would be approximately \$20 million from those
13 two programs.

14 Q. And those who run for charities, I assume that they don't
15 have to qualify like the majority of the runners?

16 A. The entries that are provided to the charities waive the
17 qualifying requirement, although there are some runners who
18 have met the qualifying requirement who choose to run via the
19 charity programs.

02:36 20 Q. Are there other events that the BAA puts on around the
21 time of the marathon?

22 A. During marathon weekend there are events in two
23 categories: First, athletic. On either Saturday or Sunday --
24 in 2013 it was on Sunday -- we conduct a five-kilometer road
25 race that starts -- in those days started and finished at the

1 Boston Marathon finish line with, in that year, about 7,500
2 participants. That's followed on that day by a series of urban
3 mile races: one-mile races around city streets with six
4 categories. One actually is one kilometer rather than a mile.
5 There's a one-kilometer race for middle-school boys and one for
6 middle-school girls; and then there's a one-mile race for
7 high-school boys and for high-school girls; and then a one-mile
8 race for professional male and female competitors. They run
9 around city blocks, coming past the finish line and the
02:37 10 grandstand a couple of times.

11 And then in the afternoon on Saturday of marathon weekend
12 we have what's called the "Relay Challenge" which is a series
13 of relay races along Boylston Street right by Copley Square in
14 the Back Bay, with teams comprised of kids from Boston schools,
15 schools from towns along the marathon course and a few other
16 towns. And the kids who compete in those races are kids who
17 have been -- have gone through a training program to get ready
18 for it. Those are the athletic events.

19 There are then a series of other events, more on the
02:38 20 social side of things, some welcoming events. There is an
21 event at which we make presentations of numbers to returning
22 champions, known as the "Champions' Breakfast"; there is,
23 through the course of the weekend, what is referred to as the
24 "Expo," which is perhaps most easily seen as a kind of trade
25 show, usually at the John Hynes Convention Center, at the

1 Prudential, at which people in the running and fitness industry
2 have booths at which they exhibit products and where people can
3 buy things.

4 For people who have come to run in the race, they have to
5 go to the Expo to pick up their race number. They receive a
6 postcard which they then bring to the Expo; they go through our
7 registration area. They receive their number, they receive the
8 T-shirt that Boston Marathon contestants receive, then go
9 through the Expo. It is a very large and heavily attended
02:39 10 event.

11 After the marathon is over, there is an award ceremony
12 recognizing the winners, both those who have won prize money
13 and people through five-year increments of age category, male
14 and female.

15 I left out something in the beginning. The night before
16 the marathon, on Sunday evening, there is a pasta dinner for
17 all runners who choose to go that's conducted at Boston City
18 Hall and Government Center. A couple of years ago about 8,000
19 people attended that event.

02:39 20 Following the race, following the award ceremony, there is
21 then a post-race party that is conducted. It has, in recent
22 years, been up at the House of Blues and Fenway Park.

23 Q. Aside from the events that the BAA puts on, are there
24 other social events on that day of Marathon Monday?

25 A. There are a great many people who come to Boston for the

1 marathon. People who are, for example, publishers in the
2 running industry, who have magazines; equipment manufacturers
3 come. And for many of them, they will host social events for
4 the people whom they would like to reach. So there are a great
5 many social events that go on through the course of the weekend
6 that are independent from the BAA.

7 Q. Now, are there sporting events going on around the same
8 time?

9 A. Well, the most notable one on the same day as the marathon
02:40 10 is a Red Sox game that is traditionally played in the morning
11 on Patriots' Day as opposed to the normal game times. And it
12 has been common for many years for a lot of people to leave the
13 Red Sox game and then walk down into Kenmore Square to watch
14 the marathon go by.

15 Q. It may seem obvious, but what kind of media attention does
16 the Boston Marathon receive?

17 A. A substantial amount. There are approximately a thousand
18 media credentials issued, but that's total people. There are
19 80 organizations that are registered. Some are print; some are
02:41 20 TV of all kinds, domestic and international. There are 20
21 international outlets that come and receive credentials and
22 cover the race. It is covered on television in Boston by our
23 broadcast partner here. It is then carried nationally by a
24 separate carrier with whom we contract.

25 The BAA contracts with a firm to produce the video

1 production, the TV show, as it were. And that is conveyed
2 locally by one station, nationally by a national network. And
3 then there are -- it's also live-streamed over the Internet.
4 And there are individual broadcasting companies in different
5 countries, 20 or so, that carry the race in those nations.

6 Q. And is there an estimate about how many -- the volume of
7 people who watch the marathon in some respect?

8 A. I haven't looked at that in recent times. I'm not an
9 expert in ratings. It's a pretty large number, but the fact
02:43 10 that it's on a Monday diminishes that to some extent. It's not
11 a holiday anywhere else.

12 Q. Are there various partnerships aside from the sponsorships
13 and the charities that you described in which either the BAA or
14 some other partners have relations with? Business
15 partnerships, relations with -- in the Boston area?

16 A. Perhaps you can guide me a little bit further.

17 Q. Sure. Are there hotels, restaurants, other types of --

18 A. Oh, I see. Well, there is a host hotel for us that is
19 right in Copley Square, the Copley Plaza Hotel. That's the
02:43 20 place where the BAA conducts most of our press events and a
21 couple of large social events; one that I failed to mention
22 before, on Saturday evening, a large reception that was known
23 for many years as the Mayor's Reception.

24 It is that organization with whom we have a direct
25 relationship, but all of the surrounding hotels and restaurants

1 benefit from all of the runners that are there. We have never
2 had a need to enter into relationships with those hotels or
3 restaurants, to sort of help them out, because people seek them
4 out quite a lot. We do provide entrance to the race with
5 something referred to as a "runner's passport," which shows
6 them as entrants to the marathon and provides them discounts at
7 some restaurants where they might go.

8 Q. What type of logistics does the BAA have to accommodate
9 for to put on an events like the marathon?

02:44 10 A. There is a very substantial amount of work to be done in
11 order to provide for the needs of all the runners as well as
12 making everything as accessible as we can for spectators and
13 for media. If one starts at the beginning, with a race
14 starting out in Hopkinton, and most people being somewhere
15 else, we need to get them all out there. So we have a very
16 extensive bussing program that takes place beginning early on
17 Monday morning, sometimes as early as six o'clock, with people
18 reporting to the Boston Common and being bussed out to
19 Hopkinton in waves.

02:45 20 They get out there and they need a place to wait for the
21 race to start, so we work with the town officials in Hopkinton
22 to provide what's referred to as an athletes' village out
23 there, where athletes can await the beginning of the race.
24 There are announcements; there are refreshments for them if
25 they need them. And they are then -- because there are so many

1 of them and because the course is really the same as it was in
2 1897 -- it hasn't gotten any wider -- they have to come in
3 waves. In 2013 there were three waves of 9,000 each.

4 And so the first wave will be brought out to the finish
5 area, and they will go off; 20 minutes later another wave will
6 come out, and they will go off; 20 minutes later another wave
7 will come out and they will go off. So the first major
8 logistical challenge is just making sure they're all there,
9 bussing as much as 80 percent of them out there, and then
02:46 10 getting them off to an orderly start.

11 Going down the course, the next two most important areas
12 are hydration and health. For someone running 26 miles, 42
13 kilometers, they need hydration along the way. We have
14 hydration stations with either water -- with water and Gatorade
15 virtually every mile along the course, all the way to the
16 finish. And in order to meet possible health needs, there are
17 first-aid medical tents nearly every mile along the way.

18 The hydration stations are busy right from the beginning
19 all the way along the course. The first-aid and medical tents
02:47 20 are less busy in the early stages of the race. It is a very
21 fit field of runners. Virtually all of them have met a
22 qualifying standard. But as they get further down the course,
23 medical interactions become a little bit greater, and so the
24 first-aid medical tents are larger.

25 As one gets all the way down through the course to the

1 finish area, now you have some thousands of runners who are
2 done and they stop, and their needs need to be met there. When
3 they cross the finish line, they receive more hydration; they
4 receive something to eat; they receive their finisher's medal,
5 which is very important to them; they receive a heat-retention
6 cape, a blanket to keep them warm.

7 And if they need medical attention, there are really two
8 medical tents that are available for them. The first is a very
9 large one, referred to as Medical Tent A, which is located at
02:48 10 Dartmouth Street in the Back Bay right in front of the Boston
11 Public Library. It's a very large white tent, quite noticeable
12 by anyone, with space for about 200 cots inside.

13 There is also a second medical tent down the road, a
14 little bit further in the Back Bay, which is a little less than
15 half the size of that for overflow and for runners who may
16 cross the finish line and feel all right and receive their
17 refreshments, but as they get a little further down, suddenly
18 get a little shaky. And that can happen. So they would go to
19 Medical Tent B.

02:48 20 There is also a large area down in that part of the Back
21 Bay where people can be reunited with their families, what's
22 referred to as the family meeting area. And so there are
23 letters on lightposts and sign posts so that people whose last
24 name begins with R can meet their family in that locale.

25 The last bit of business, kind of a large item, is that in

1 2010, '11, '12, 13, runners could take out to the start with
2 them a personal bag that -- we would issue them a bag that they
3 could use to put personal belongings in and then be able to
4 reclaim them at the finish. And those bags would be put on
5 busses, those busses would be driven back into Boston while the
6 competition was going on, and when the runners finish, they
7 cross the line, received hydration, food, heat-retention cape,
8 whatever they wanted, they would then come to a place where
9 these busses were and they could, with their race number,
02:50 10 receive the correspondingly numbered bag with their personal
11 effects in there. At that point, once they had all of that,
12 went off to meet their family, then they're on their own.

13 Q. What types of precautions does the BAA take with regards
14 to security?

15 A. We partner closely with public safety officials at all
16 levels, and it is they who provide for security matters. A
17 rather simple way to think about it might be that our attention
18 is focused on what happens inside the curbstones, for the
19 runners, and public safety officials are more looking to the
02:50 20 outside. There is a very high level of coordination that goes
21 on among those public safety officials in the months leading up
22 to the marathon every year.

23 It is coordinated to a considerable degree through the
24 Massachusetts Emergency Management Agency, which has its
25 headquarters in Framingham, Massachusetts. And there are

1 meetings out in Framingham, at their headquarters, at which
2 both public safety and police, fire, emergency management,
3 emergency medical people get together along with various state
4 agencies and federal agencies to plan for the race that year
5 and to address any security issues that they think need to be
6 addressed.

7 Q. Let's go to the 2013 marathon. How did that day start?

8 A. 2013 began as any marathon had for a number of years with
9 runners going down to the Common to get on busses to go out to
02:51 10 Hopkinton. It was a good weather day. The year before, in
11 2012, we had had very high heat and had to take extra measures
12 in order to provide, particularly for hydration, for runners.
13 So when the race was beginning to form in 2013, it was good
14 news for everybody that it was a good weather day. A good day
15 to run and a good day to watch.

16 Q. And so there were staggered start times that morning?

17 A. That's right. Once the runners got out to Hopkinton, then
18 there is a very tight schedule to the way everything begins.
19 At nine o'clock the athletes to whom we refer as mobility
02:52 20 impaired, those for whom mobility is most challenging, began.
21 At 9:17 the wheelchairs go off. Men and women in push
22 wheelchairs. At 9:22 hand cycles would begin. There's a small
23 number of people who compete in hand cycles, a wheelchair but
24 where they don't push the rim of the wheel; they have what look
25 like pedals in their hands that they turn. There's a geared

1 system that moves the chair down the road. At 9:32 the elite
2 women, the women competing for prize money, start so that they
3 can -- the reason for that being so that they can have a
4 competition themselves rather than being in the midst of a
5 large pack of runners, including men.

6 And then at ten o'clock the large race begins. At 10 a.m.
7 the elite men start, the men competing for prize money. And
8 then at the same time, right behind them, is Wave 1 of the
9 overall field, so the first group of 9,000 runners. After they
02:54 10 leave, there's a 20-minute period for runners to move from the
11 athletes' village out to the starting line so that Wave 2 can
12 begin at 10:20. And that process repeats itself. Wave 2
13 leaves; the people in Wave 3 move from the athletes' village
14 out to the starting line, and at 10:40 they began.

15 Q. And what were your duties essentially during the day?

16 A. Well, as executive director of the Boston Athletic
17 Association, we, the organization, and I, as its
18 representative, have overall responsibility for the race.
19 We -- there's a gentleman who has been the race director for a
02:54 20 number of years who is in charge of the tactical implementation
21 of everything that happens out on the race course, and he is
22 out in Hopkinton at the beginning of the race and then on a
23 lead vehicle in front of it.

24 Having been the finish line announcer for a very long
25 time, I have continued to do that. That leaves me at the

1 finish line. So we have a race director who's out on the
2 course and I at the finish, and with a couple of other people
3 there in case I have to -- in case I'm called away. I would
4 act as finish line announcer, which really for a long time
5 involves talking to people who have come to the finish line
6 quite early, long before any runners are coming in, but to get
7 a good space to watch.

8 And so I would, at the time of the start of the wheelchair
9 division, start talking about 9:15 or so, just to describe for
02:55 10 people the scene out in Hopkinton, what it looks like, what it
11 feels like, and then let them know when races began. And then
12 over the course of the morning, over the course of the race,
13 describe to people a little bit of what was happening, who was
14 ahead, who was challenging, just to keep them apprised of what
15 was going on. Over the course of that time, more and more
16 people would begin to fill in the grandstands that are there.

17 Q. Now, before you came in to testify, did I show you several
18 photos, a video and a few diagrams?

19 A. Yes, you did.

02:56 20 Q. And did you recognize those?

21 A. I did.

22 Q. And Exhibits 1 through 4, are those photos of the finish
23 line area of the Boston Marathon on 2013?

24 A. They are.

25 Q. And do those fairly and accurately depict that scene that

1 day?

2 A. Yes, they do.

3 Q. And Exhibit 5, is that a video captured from the photo
4 bridge at the Boston Marathon on 2013?

5 A. Yes.

6 Q. And does that fairly and accurately depict the events that
7 occurred at a certain period of time during the Boston
8 Marathon?

9 A. It does.

02:56 10 Q. And the diagrams that I showed you, Exhibit 774, 789
11 through 791, are those fair and accurate diagrams of the area
12 on Boylston Street leading up to the marathon finish line?

13 A. Yes, they are.

14 MR. CHAKRAVARTY: Your Honor, at this point I would
15 move in Exhibits 1 through 5, 774, 789 through 791.

16 MS. CONRAD: Your Honor, no objection to the photos
17 and video; however, with respect to the diagrams, we have no
18 objection to them being used as chalks. We do object at this
19 juncture to their admission as exhibits.

02:57 20 THE COURT: Well, perhaps we could have something
21 about their preparation.

22 BY MR. CHAKRAVARTY:

23 Q. Mr. Grilk, the diagrams that you saw with regards to the
24 finish line configuration, and perhaps just for the --

25 MS. CONRAD: I don't have an objection to them being

1 shown, just to be clear.

2 THE COURT: Yeah. Well, I wanted to give you an
3 opportunity for foundation if that was the -- if that was what
4 was needed. If that's not, then we can just reserve on the
5 question. We can use them now and decide the admission
6 question later.

7 MR. CHAKRAVARTY: That's fine, your Honor. I mean,
8 they are relatively to scale. It's not like a chalk --

9 MS. CONRAD: Objection to Mr. Chakravarty testifying.

02:58 10 MR. CHAKRAVARTY: Fair enough.

11 So if we could put up Exhibit 1, please.

12 (Government Exhibit Nos. 1 through 5, admitted into
13 evidence; Exhibits Nos. 774, 789 through 791, marked for
14 identification.)

15 BY MR. CHAKRAVARTY:

16 Q. Mr. Grilk, can you describe this scene for us?

17 A. That is an aerial view of Boylston Street looking down
18 toward the finish line as the runners would approach it. And
19 as one looks, there is what appears to be a blue triangle, and
02:58 20 that is just after the finish line. And up above it --

21 Q. Where I circled, is that what you're talking about, the
22 blue triangle?

23 A. That's right. Yes, that is just beyond the finish line.
24 The finish line is the yellow line in the road, just prior to
25 that as one looks up the street here.

1 Q. Is that where I just --

2 A. It is there, yes.

3 And then up above where one sees what appears to be a
4 white strip is a temporary structure that we refer to as the
5 photo bridge, which is where photo and video journalists are
6 who are taking pictures. It's also where a couple of the media
7 outlets are that are doing a broadcast of the race, both the
8 local broadcast and the organization that does the national
9 broadcast.

02:59 10 Q. And the video that we're going to watch in a few seconds,
11 is that taken from that photo bridge?

12 A. It's taken from the photo bridge looking back up in the
13 other direction, yes.

14 Q. Is this the grandstand area over here that you're
15 describing?

16 A. Yes, it is.

17 Q. Okay. And over here, do you recognize that structure
18 behind what I just circled?

19 A. With the blue tent is the announcer's platform. So it is
03:00 20 there that I sit during the time when announcing the race.

21 Q. Now, along that side of the street, are there various
22 flags lining the street?

23 A. There are. There are metal structures up there,
24 barricades, and attached to those are flags of many countries
25 representing countries from which runners come to run the race.

1 MR. CHAKRAVARTY: May I have Exhibit 2, please.

2 Q. Can you describe what you see here?

3 A. The video screen that appears in the picture is put up
4 each year at the corner of Boylston Street and Exeter Street.
5 It is across the street from where those grandstands are
6 located. So it allows people who are seated in the grandstand
7 to be able to see a video feed of what is happening out on the
8 race course.

9 Q. All right. And this -- so from your position where you do
03:01 10 the commentating, can you typically see the jumbotron?

11 A. I cannot. It's behind the flags.

12 MR. CHAKRAVARTY: Exhibit 3, please.

13 Q. Now, can you tell where this depicts?

14 A. Well, this is -- looking at the same corner, just for
15 reference, at the very top right one can see a little blue
16 patch with the John Hancock logo. That's the large video
17 screen that we saw before. The street is Boylston Street. And
18 this depicts runners coming to the finish there as they cross
19 Exeter Street, which is the cross-street there in front of the
03:02 20 grandstand, which one can see on the left there. They have
21 about another half a block to go to the finish line, which is
22 opposite the center of the Boston Public Library.

23 MR. CHAKRAVARTY: And Exhibit 4, please.

24 Q. And can you describe what that is?

25 A. This is an aerial view of the marathon finish, again,

1 looking in the direction in which the runners are going. The
2 finish line in yellow is where you have marked it. On the
3 right side of the picture are the really two grandstands. In
4 the lower right-hand corner is the larger grandstand which is
5 most analogous to, perhaps, bleachers one might see at a high
6 school athletic event. The lower grandstand with white chairs
7 is smaller, and that's right on the finish line. And it is
8 right there at which presentations are made of the champions,
9 trophy and metal, and the olive wreath that is given to the
03:03 10 champion.

11 As one goes beyond the finish line, it is -- one can see
12 the photo bridge much more clearly here with a white awning
13 over the top.

14 Q. And up in the upper right-hand corner, what is that?

15 A. That is Medical Tent A that I described before. So people
16 going through the finish area can go in there if necessary.
17 There are volunteers who are out in the finish area who are
18 able to pick up anyone who needs medical assistance, put them
19 in a wheelchair and take them down to that tent.

03:03 20 Q. And is this the booth that you typically --

21 A. That is where I'm located, yes.

22 Q. And these are the flags that you described earlier?

23 A. They are.

24 MR. CHAKRAVARTY: Let's put up Exhibit 774, if we
25 could.

1 Q. Why don't you describe what this shows.

2 A. It's a diagram of Boylston Street looking down from above.
3 The yellow finish line is easy to see there. And just to the
4 right of that, a kind of grayish white line, represents where
5 the photo bridge is. The lower portion of the diagram
6 represents the Boston Public Library: to the right, the older
7 portion; to the left, the newer portion.

8 Q. And based on your experience at the marathon, does this
9 diagram appear to be scale?

03:04 10 MS. CONRAD: Objection.

11 THE COURT: Overruled.

12 You may answer it.

13 THE WITNESS: Yes.

14 BY MR. CHAKRAVARTY:

15 Q. And there are names of various establishments on the
16 diagram. Do those purport to represent the structures that are
17 next to them?

18 A. They are places that I remember from that time. There
19 have been some changes since 2013, but yes.

03:05 20 MR. CHAKRAVARTY: Can we do Exhibit 789, please.

21 Q. And is this just a smaller version of just that block
22 closest to the -- between Exeter and the finish lane?

23 A. That's right. Exeter Street, the gray vertical line to
24 the left, and Dartmouth Street over to the right, and the
25 Medical Tent A depicted in the lower right-hand corner.

1 Q. Now, on this map where were those -- the flags that we
2 were just looking at on the photo?

3 A. If one looks down at the finish line, it is on the -- how
4 best to say it, opposite the library. So the library is on the
5 lower portion. So one would go across the street, and the
6 flags go from right around where the finish line is up to just
7 about Exeter Street at the left edge of the picture.

8 Q. So is it the area where I circled?

9 A. Yes.

03:06 10 THE COURT: Mr. Chakravarty, I assume you know this,
11 but the witness is able to do that as well.

12 MR. CHAKRAVARTY: I do, your Honor. I was just about
13 to ask him that but --

14 THE COURT: I wasn't sure whether you --

15 MR. CHAKRAVARTY: Thank you, your Honor.

16 Exhibit 790, please.

17 BY MR. CHAKRAVARTY:

18 Q. And do you recognize what this stretch of Boston is?

19 A. This is now looking one block further out on the race
03:06 20 course, so that now we're between Exeter and Fairfield. So
21 the gray -- I can do this?

22 Q. You may have to press hard. That's why I was reluctant to
23 ask you --

24 A. So there is Exeter Street, which is the street we were
25 looking at before; now it's a block further up there. There's

1 Fairfield Street. The finish line is now down that way a half
2 a block.

3 Q. Okay. And are you familiar with this area in front of the
4 Forum restaurant?

5 A. I am.

6 MR. CHAKRAVARTY: Exhibit 791, please.

7 Q. And can you describe what this depicts?

8 A. This goes up now yet further so that now we're up -- here
9 is Hereford Street, which is where -- let's see.

03:08 10 Q. Could it be Gloucester?

11 A. Yeah, it would be Gloucester. Hereford is yet one further
12 up where the runners come in. So now it's a further block up
13 the race course prior to the finish.

14 Q. Now we're on 2013 Marathon Monday. Were spectators lined
15 up and down this part of the route?

16 A. Yes, on both sides of the street.

17 Q. And how dense would you compare the spectator --
18 spectating population in this area versus elsewhere on the
19 course?

03:08 20 A. It is as dense here as it gets. There are people that
21 fill the sidewalks. The same is true in some other parts of
22 the course. There are places where people fill all available
23 space, or so it seems. It's true here. If one goes out to the
24 Heartbreak Hill area in Newton, there are very dense, deep
25 crowds there as well.

1 MR. CHAKRAVARTY: Can we call up Exhibit 5, please.

2 Q. Now, the density of the crowd: About two and a half hours
3 or so after the last wave had left Hopkinton, approximately how
4 dense would you say the crowds were in that area versus earlier
5 in the day?

6 A. The crowds tend not to diminish very much, at least from
7 my observation. There are a lot of people who stay out there,
8 and they continue to cheer loudly. So it would seem that they
9 are out there enjoying cheering for the citizen runners, the
03:09 10 non-elites, but the people who have worked so hard to qualify
11 and are now finishing the Boston Marathon.

12 Q. So on Exhibit 5, there's a clock that I'm circling here
13 with a time on it. What does that time represent?

14 A. That represents the time that's elapsed since a particular
15 wave left the starting line. In years gone by, there was only
16 one time for the marathon. Everyone lined up at the starting
17 line and the gun went off and everyone ran in, and your time
18 for the race was the time at the finish line when you got
19 there. So if you started back in the pack, you were at a
03:10 20 disadvantage, but it was important for you to know what the
21 clock was at the finish because that was your official time for
22 the race.

23 As years have gone by, technology has made that clock less
24 important in that regard. Now the race is timed electronically
25 for the vast majority of people who are running. So that they

1 have a chip -- originally they were tied in to people's running
2 shoes, now it appears it's in the back of one's race number.
3 And every time one goes through a five-kilometer checkpoint,
4 time is recorded. The official time for a runner is the time
5 recorded when they cross the finish line, and it's the time
6 that has elapsed and been measured electronically from the time
7 they cross the start to the time they get to the finish.

8 The principal benefit that those clocks provide these days
9 is really more to give spectators a sense for how far along the
03:11 10 race is. So at the very beginning of the day when the clocks
11 are first set up, the starting gun is fired and that triggers
12 an electronic pulse that starts the clock -- the official clock
13 out in Hopkinton, but also triggers the clocks at the finish.
14 And it's initially set for the wheelchair competition.
15 So -- and that's the first group to finish. So that spectators
16 can see where that is and they see the official time for the
17 wheelchair competitors because they all start at once. It's a
18 relatively modest number, 50 or so.

19 When the women's elite race starts about 15 minutes after
03:12 20 the wheelchair competitors start, then one of the two finish
21 clocks is set to the women's elite start, and it then changes
22 as time goes by. Then at ten o'clock, the men's elite group
23 and the first wave of runners starts, and then the wheelchair
24 clock switches back over to the starting time for the main
25 race.

1 There are scheduled times to shift those times back and
2 forth among waves but it is sort of loosely observed. Once the
3 race is really going on, the officials in the street -- one in
4 particular -- will watch to see whether it now appears that
5 most of Wave 1 has come through. And at that point, one or
6 both clocks will switch to Wave 2.

7 The way that an official can tell is that the waves have
8 different colored bibs, different colored numbers: Wave 1,
9 red; Wave 2, white; Wave 3, blue. And so those clocks would
03:13 10 shift. And at a certain point, both clocks will reflect the
11 last wave of runners to have started.

12 Q. So if the last wave of runners on April 15 of 2013 was at
13 10:40 a.m., the clock shows that the time is approximately 2:49
14 p.m.?

15 A. It does.

16 Q. And without identifying specific individuals, have you
17 reviewed this video and recognized several individuals in the
18 video?

19 A. I do.

03:13 20 Q. All right. I'm going to play the video through now.

21 (Video played.)

22 Q. Mr. Grilk, the portion of the video that I stopped here
23 and I'm circling, are you familiar with some of the
24 establishments that are around that blast?

25 A. Yes. The one with which I'm most familiar is a store that

1 sells running footwear and apparel, Marathon Sports.

2 (Video played.)

3 Q. Now, here, the location of the second blast, what
4 establishment, if any, is near there?

5 A. Again, the one with which I'm most familiar is the Forum
6 restaurant.

7 Q. And you've been to both of these locations after the
8 blast?

9 A. I have.

03:15 10 Q. What happened after the blast occurred from the BAA
11 perspective?

12 A. Well, for us in a situation like that, our approach is to
13 focus on those people to whom we have the greatest
14 responsibility, to focus on those things that we can control
15 and try not to be too distracted by those that we cannot. And
16 that day we had runners out on the course. We, the BAA,
17 couldn't help with medical attention beyond the assets that
18 were -- beyond the people who were already there in the medical
19 tent doing what they did. So for us as race organizers, we
03:16 20 really looked to those people who were outside that area to do
21 what we could to meet their needs.

22 There were some 5,600 runners who were stopped, who were
23 unable to complete the course, some starting at Massachusetts
24 Avenue and Commonwealth Avenue in the Back Bay. Everyone was
25 stopped and no one was allowed to go beyond there. So our

1 focus was initially on, what can we do for these people? How
2 do we get them back in? There were some who were, for example,
3 taken to a church at Boston College. So we wanted to get
4 busses out there so we could get them back in and get people
5 back in from other places.

6 Also, it was very important to runners to be able to
7 collect their personal belongings after the race. For many
8 people, they would have phones in there, hotel room keys,
9 things that were important enough to them that they checked
03:17 10 them so they could get them immediately after the race. And we
11 wanted to find -- we wanted to try to get that available to
12 them as quickly as we could.

13 Those personal bags were in busses that were on Boylston
14 Street, and that whole area was closed immediately by public
15 safety authorities. So we had conversations with them to see
16 if we couldn't find some way to get some of those belongings
17 out for people.

18 So that's what we could do. And then be as cooperative as
19 we could with public safety and medical authorities to deal
03:18 20 with the needs of those who had medical needs.

21 Q. And did those people go in to the scene and deal with the
22 emergency response?

23 A. Well, the people on the scene for us, our volunteers, our
24 medical staff attended immediately to needs of everybody whom
25 they could, going back to the same principle: Where did they

1 feel an obligation? It was to those runners or anybody who was
2 in the finish area who had been hurt. And they went out to get
3 them, to do what they could, to provide first aid on the scene
4 or get them down to the medical tent.

5 Generally what happened was that volunteers and others
6 see -- official volunteers with volunteer jackets or people who
7 were just there, spectators, would do what they could to get
8 people who had been injured down into the medical area. As
9 those people were brought into the medical tent, those who were
03:19 10 most critically injured were taken immediately to ambulances at
11 the other end of the tent; others were attended to, as well as
12 possible, while more ambulances could be obtained, and that was
13 generally being coordinated by Boston EMS, Boston Emergency
14 Medical Services. And those people did a magnificent job.
15 Everyone who entered that tent alive is alive today.

16 Q. Is it fair to say that that tent filled up?

17 A. Yes, it did.

18 Q. Did the marathon go forward in 2014?

19 A. It did.

03:20 20 Q. When is it scheduled in 2015?

21 A. On Patriots' Day. April 20th this year, 2015.

22 Q. And has it grown?

23 A. Last year -- well, for several years, from 2010 through
24 '13, the race had been 27,000. That was the field size.

25 Because there were so many people who were unable to finish in

1 2013, with the cooperation of the eight cities and towns and
2 the Commonwealth of Massachusetts, we were allowed, on a
3 one-time basis, to enlarge the field so that we could give
4 everyone who wasn't able to finish before, the opportunity to
5 come and run if they wished to. And of those 5,600 or so
6 people, the better part of 5,000 did.

7 We also wanted to offer the opportunity to run to other
8 people who were profoundly affected by what had happened in
9 2013, so the field size went up to 36,000 for that year. For
03:21 10 this coming April, the field size will go back down, but not
11 all the way to 27,000; it will be 30,000.

12 MR. CHAKRAVARTY: One moment, your Honor.

13 Thank you.

14 THE COURT: All right.

15 MS. CONRAD: May I? I just have a couple --

16 THE COURT: No, use the podium.

17 CROSS-EXAMINATION

18 BY MS. CONRAD:

19 Q. Good afternoon, sir. My name is Miriam Conrad.

03:22 20 I just have a couple of questions about the diagrams that
21 Mr. Chakravarty showed you. Did you prepare those yourself?

22 A. I did not.

23 Q. And do you -- Mr. Chakravarty asked you if they appeared
24 to be to scale. I think that was the question.

25 A. That was the question.

1 Q. And you said that they did. Can you tell me what you mean
2 by that, when you say "to scale"?

3 A. When I see that and compare it to my experience of walking
4 up and down the street along there quite often, it looks about
5 right to me.

6 Q. It looks about right?

7 A. That's right.

8 Q. But you haven't done any measurements of your own?

9 A. That's correct.

03:22 10 Q. And with respect to the specific businesses that are
11 depicted there, I think you said that you were familiar with
12 some of them or maybe you said that some of those businesses
13 are no longer there. So do you know as far as each of those
14 business names --

15 MS. CONRAD: If we could get 774 up on the screen,
16 please.

17 Q. -- do you know if those businesses were there in 2013,
18 each and every one of them?

19 A. I can't tell you particularly that each and every one of
03:23 20 them was there.

21 Q. And there also seems to be some little brown things along
22 the way. Do you know what those depict?

23 A. I don't know that to --

24 Q. There. Do you know what all those are?

25 A. I'm sorry. To what do you --

1 Q. Right there.

2 A. Oh. I do not know.

3 MS. CONRAD: Thank you very much.

4 THE COURT: Anything else?

5 MR. CHAKRAVARTY: No, your Honor.

6 THE COURT: All right, sir. Thank you. You may step
7 down.

8 (The witness is excused.)

9 MR. WEINREB: Your Honor, the government calls Shane
03:24 10 O'Hara.

11 SHANE O'HARA, duly sworn

12 THE CLERK: Have a seat, please. State your name and
13 spell your last name for the record, keep your voice up and
14 speak into the mic so everyone can hear you.

15 THE WITNESS: Shane O'Hara, O-H A R A.

16 DIRECT EXAMINATION

17 BY MR. WEINREB:

18 Q. Good afternoon. How old are you?

19 A. Forty-four.

03:25 20 Q. Do you have a family?

21 A. I'm sorry?

22 Q. Do you have a family?

23 A. Yes, I do.

24 Q. And what town do you live in?

25 A. I live in the town of Raynham.

1 Q. How long have you lived there?

2 A. Twelve years now.

3 Q. Where do you work?

4 A. Marathon Sports.

5 Q. And where's that located?

6 A. It is located on Boylston Street, 671, Boston, Mass.

7 Q. What do you do there?

8 A. I'm the store manager.

9 Q. How long have you had that job?

03:25 10 A. I've been there since it opened in 2001, May.

11 Q. And how long have you been the manager of Marathon Sports?

12 A. Since May of 2001.

13 MR. WEINREB: Can we bring up 789, please?

14 Q. So, Mr. O'Hara, you're going to see on your monitor a map.

15 And let me see if I can make it a little bigger. I'd like to
16 make it a little bigger than that. Okay.

17 So turning your attention here -- all right. Let's try
18 that again.

19 Okay. So is that Marathon Sports right there?

03:27 20 A. Yes.

21 Q. And you see this mark there?

22 A. Yes, I do.

23 Q. Do you know what that represents?

24 A. That is the finish line to the Boston Marathon.

25 Q. Is the store normally open on Marathon Monday?

1 A. Yes.

2 Q. What hours?

3 A. We open -- it's one of my -- after a long, busy weekend,
4 that's one day that I can open up at ten o'clock as opposed to
5 nine o'clock. So ten o'clock we usually open on Marathon
6 Monday.

7 Q. And are you normally there?

8 A. Yes.

9 Q. Doing what?

03:27 10 A. Monday is kind of a strange day. It's a quiet day after a
11 very busy weekend, knowing -- like Tuesday is one of
12 your -- probably your maybe third or second busiest day. So
13 Monday is the day I can kind of -- you know, we have a large
14 staff enough so we -- I do a lot of cleanup, a lot of prep work
15 because I'm getting product from the other stores that are now
16 closed on Monday, that I prepare to get ready for Tuesday. So
17 for me it's a day that I can kind of do behind-the-scenes --
18 you do some selling, but you don't do a lot of footwear; you do
19 more T-shirts, marathon apparel.

03:28 20 Q. And what's the day usually like outside of the store?

21 A. In only a few years did we have rain, but it's usually a
22 nice day so the crowd even starts to gather at that time. You
23 can kind of start hearing the -- you know, the announcements
24 from when the race is starting and people start gathering, and
25 they already have maybe their spot already picked out. And I

1 would say throughout the whole, entire day the crowd starts to
2 go maybe eight to ten people deep. Obviously for the elite
3 runners when they come, that's the biggest crowd, and then it
4 starts to thin out through the day.

5 Q. And what's the day usually like inside the store?

6 A. It's a day of constant motion of people coming in and out.
7 You know, you'll answer your questions. Do you have a
8 bathroom? No. You know, they'll hang in there a little while,
9 especially if it's early in the morning when it's a little on
03:29 10 the cold side. Some people -- because it's a Monday and some
11 places are closed -- we actually even take in returns on that
12 particular day from the other stores.

13 So it's kind of a common -- it's a normal day but you have
14 a lot more quicker sales. So it's more interactions. Those
15 are the days that you have people that are from out of town
16 that are now in the city to watch their runner finish.

17 Q. Now, I notice the store is called "Marathon Sports." Is
18 there a special relationship of some kind between the store and
19 the marathon?

03:29 20 A. No. The original store is out in Cambridge. It's been
21 around since 1975. And the original owner, I assume, just came
22 up with the name "Marathon Sports."

23 Q. Do you personally have any special relationship with the
24 marathon or with the runners?

25 A. I definitely do. Through the years, you know, you start

1 to -- you get your -- maybe you meet your runner for the first
2 time that they're getting their pair of shoes for the first
3 time maybe around December-January, and you kind of follow them
4 through.

5 Before the store in Boston, I used to manage the one in
6 Wellesley. So I've known many runners now for many, many years
7 that you help them from the time they get their shoes to
8 process of getting food, clothing, training tips, all that.

9 Q. Were you working on Marathon Monday in 2013?

03:30 10 A. Yes, I was.

11 Q. And do you remember when you and I met earlier, you looked
12 at some pictures that had you in them?

13 A. Yes.

14 Q. Okay. Those were Exhibit 6, Exhibit 8 and Exhibit 9.

15 Were those fair and accurate pictures of what it looked
16 like outside the store at the times that those pictures were
17 taken?

18 A. Yes, they were.

19 Q. Okay. And you also remember looking at Exhibit 7 which
03:31 20 was a surveillance video from the surveillance cameras in your
21 store?

22 A. Uh-huh.

23 Q. You have to say yes or no.

24 A. Yes.

25 Q. And was that also a fair and accurate depiction of what

1 was going on inside the store at the time that video was taken?

2 A. Absolutely was.

3 MR. WEINREB: Your Honor, the government offers
4 Exhibits 6, 7, 8 and 9.

5 MS. CLARKE: No objection, your Honor.

6 THE COURT: All right. Exhibits 6, 7, 8 and 9 are
7 admitted.

8 (Government Exhibit Nos. 6, 7, 8 and 9 received into
9 evidence.)

03:31 10 MR. WEINREB: Can we have Exhibit 6, please.

11 BY MR. WEINREB:

12 Q. So do you see that store called "Sugary Heaven"?

13 A. Yes, I do.

14 Q. And is Marathon Sports, your store, just to the left?

15 A. Yes.

16 Q. And is that you standing in the doorway with your arms
17 crossed?

18 A. Yes, it is.

19 Q. What are you doing in that picture?

03:32 20 A. Basically, I'm -- the finish line is obviously just to the
21 left of where I would be looking, so I'm just watching some of
22 the runners finishing, probably noting maybe the times that
23 they're coming in. Because I have to kind of go in and out, I
24 can't really hang out necessarily out there, so I just kind of
25 guard the door a little bit.

1 Q. Okay. And down here we see some flags. Are those the
2 flags that line the street where the finish line is?

3 A. That is correct.

4 Q. Were you in the store when the bombs exploded that day?

5 A. Yes, I was.

6 Q. How well do you remember the events of that day?

7 A. I feel I remember them pretty -- very well. Yeah. I
8 wouldn't be able to say that I remember exactly, but I remember
9 it very well.

03:33 10 Q. Did they make a strong impression on you?

11 A. It would be something that you would think that you would
12 never forget in your life.

13 Q. Have you thought about that day much since it happened?

14 A. We take our runners out and watch them run in the shoes
15 that we've provided for them, so every day I do because
16 I -- every day you walk outside, you can -- you are in that
17 area.

18 Q. What's the first thing you remember happening when the
19 bombs exploded?

03:33 20 A. Probably the first thing I remember is the sound, turning
21 and seeing the instant cloud of dust.

22 Q. What was the sound like?

23 A. To me, it reminded me as a kid playing with firecrackers.
24 It was like a big canon sound.

25 Q. And you say that you saw smoke?

1 A. Yes.

2 Q. Was that outside the window of your store?

3 A. Completely engulfed the whole window.

4 Q. How far away were you, would you say, from the door of
5 your store when the bomb went off?

6 A. I'd probably say I was as far as the end of that table,
7 just in front of where the -- probably maybe even a little
8 closer from the jury box.

9 MR. WEINREB: Your Honor, I don't know the distance,
03:34 10 but if the record could reflect the witness is reflecting from
11 the witness box to the jury box.

12 THE COURT: Well, not quite, but I think he was
13 referring to counsel table for the prosecution.

14 MR. WEINREB: I see, your Honor.

15 THE WITNESS: I'm not good with measurements on that,
16 either.

17 (Laughter.)

18 BY MR. WEINREB:

19 Q. That's fine. Did the blast shatter the window of the
03:34 20 store?

21 A. It did. It's a two-pane glass, from what I found out. So
22 the first pane was completely shattered through; the second one
23 luckily held.

24 Q. And what did you do when the bomb went off and you heard
25 the noise and you saw the smoke?

1 A. I was selling a pair of shoes to an old colleague, and we
2 basically were drawn to go to the front of the door.

3 Q. And what did you do when you got to the door?

4 A. I believe we were just -- kind of started taking in
5 people. People started coming in from the outside. It was
6 kind of one of those -- a chaotic kind of moment where you
7 heard -- you're seeing people coming in. I guess you wouldn't
8 even know if you should even go outside yourself. And then
9 there was sounds of needing help. So it was a reaction of
03:36 10 going outside and helping.

11 Q. Okay.

12 MR. WEINREB: Can we have Exhibit 7, please, the
13 video.

14 (Videotape played.)

15 BY MR. WEINREB:

16 Q. So is this the inside of Marathon Sports?

17 A. That is correct. That shot there is looking out towards
18 the window from the front door.

19 Q. That was a customer who just walked in?

03:36 20 A. That's our old apparel manager that just walked by with
21 the ladder.

22 Q. So in the inset, the white circle, is that you in the
23 shorts and the --

24 A. Yes.

25 Q. -- fleece?

1 A. Yup.

2 Q. And the rest of it is showing the exterior? In other
3 words, the remainder of the frame is showing the view out the
4 front door?

5 A. Yes. So like on the bottom screen, where that orange
6 jacket is, that's a camera that you can see outside so you can
7 see people coming in through your front door.

8 Q. All right. Now, what just happened?

9 A. That was the -- that was the bomb.

03:37 10 (Videotape played.)

11 Q. Is that you standing near the door?

12 A. That's me. I just kind of opened up the door there.

13 Q. What are you doing?

14 A. Probably at this stage we're trying to get people into the
15 store. The door usually is opened, so now I'm just kind of
16 holding it up and we're reaching in and trying to grab people
17 in -- into the store.

18 You ask about my memory. I thought originally I was right
19 at that door, and that's kind of a chaotic moment. This is the
03:38 20 woman that -- I didn't necessarily remember that I did the
21 tourniquet. I thought I passed that on to somebody else.

22 Q. So is that what you're doing there, you're tying something
23 around her leg?

24 A. Yup. One of my goofinesses of me is I look at people's
25 feet. So the first thing I remember is seeing her feet and

1 seeing blood trickle down her leg. And then I felt for where
2 her -- where the blood was coming from, and that's then when I
3 grabbed the shorts.

4 (Videotape played.)

5 Q. Now, what are you doing here?

6 A. We just started now tearing off as much of the apparel as
7 we could possibly find and get -- that's one of my other
8 colleagues in the green shirt there. We're just now taking --
9 me as a manager, I feel like I still have to do kind of my job,
03:39 10 so we were trying to save hangers.

11 (Laughter.)

12 A. We were trying to -- one of the strange thoughts that went
13 through my head was how am I going to take care of the
14 inventory that is leaving the store right now.

15 Q. But the apparel you were taking outside, what was it going
16 to be used for?

17 A. It was going to be used for -- one of the screams that we
18 heard is that "We need tourniquets." So it was going to be
19 just used for that: tourniquets, gauze, pressure holders,
03:39 20 anything that we could possibly use it for.

21 Q. What is the scene now like outside of the store?

22 A. Kind of total controlled chaos. The one shot that you
23 see, you see everyone standing, and then after that moment,
24 everyone's on the ground. The only ones that are standing are
25 the ones that weren't hurt and that are attending to people.

1 You feel like you're constantly going in and out, grabbing more
2 and more apparel each and every time, and it just seemed like
3 it was another person that needed help.

4 It was -- there were -- the things that haunt me is
5 the -- making decisions that who needed help first. Who needed
6 more. Who was more injured than the other. And I feel like
7 that was never my role to make that decision, but you felt like
8 you had to do that. In one of the sections, it was a scene
9 from, like, *Saving Private Ryan* or *Platoon* or anything that you
03:40 10 see in the movies that I would never have thought I would have
11 seen in real life.

12 Q. Do you remember what it smelled like out on the street?

13 A. To me it was a gunpowder smell. It was kind of a burned
14 hair smell. That's the smell that you would -- that -- I would
15 always remember smelling that.

16 Q. And what about the -- what were you hearing? What were
17 the sounds out there?

18 A. Hearing -- it took a little while before alarms went off.
19 So my building's alarm is very loud, and so it's a piercing ee,
03:41 20 ee, ee noise. You would be hearing screams. You start hearing
21 then medics coming in, police officers coming in. People are
22 saying, like, "Get away." "Need help over here." Cries. I
23 heard the -- a voice of someone saying, "Stay with me, stay
24 with me."

25 We -- the one sound that I heard from the door that -- we

1 saw where the flags were. There's the stanchions that they
2 keep, so they needed to get into that. So there were cries for
3 getting that to be torn down. And there's kind of like a dull
4 silence, so that's kind of all you heard, is, again, the cries,
5 sirens and screams of that.

6 MR. WEINREB: May I have Exhibit 8, please.

7 Q. What are we looking at here?

8 A. That's our storefront. So the black fencing that we have,
9 it was always used for our private viewing of seeing the
03:43 10 elites. The owner has many friends in the country that they,
11 you know, they come down from other running stores, so we have
12 kind of your private guests. You see the fencing now is torn
13 down, and then you see everyone that was injured.

14 Q. Is this you right here?

15 A. Yes, it is.

16 MR. WEINREB: Can we have Exhibit 9?

17 Q. And again, is this now you over here?

18 A. I was told -- that is me. I was told one time by an
19 officer to try to keep people from coming in. That's why my
03:43 20 hands are out. And I realized very quickly that that was not
21 going to happen. I remember distinctively a gentleman that
22 didn't have his shirt on and had a face that had I tried to
23 stop him, I probably wouldn't be standing there anymore. He
24 probably would have run me over or hit me.

25 And then I remember doctors coming up from the street and

1 they were showing me their medical gloves going, "All right.
2 I'm not going to stop these people anymore," and decided that
3 this was a waste of my time, that I needed to probably go back
4 in the store and get more clothing.

5 THE COURT: Mr. Weinreb, we've come to one o'clock. I
6 don't know how much more you have.

7 MR. WEINREB: Just a few more questions, your Honor.

8 THE COURT: All right.

9 BY MR. WEINREB:

03:44 10 Q. Did the store have to close after the bombing?

11 A. We were closed from that time up until the following
12 Thursday, so ten days.

13 Q. And was the store physically damaged by the blast?

14 A. We were damaged by that window. We had tile that needed
15 to be replaced, we had rugs that needed to be completely torn
16 out, and we had paint from down in the basement that needed to
17 be repainted.

18 Q. And what about the other stores on Boylston Street in the
19 area where the bombs went off. Did they have to close as well?

03:45 20 A. That whole entire street was closed until that Thursday
21 the following week, so yes.

22 Q. Ten days?

23 A. Yup.

24 Q. Thank you, Mr. O'Hara.

25 A. You're welcome.

1 MS. CLARKE: No questions, your Honor.

2 THE COURT: No questions?

3 All right, Mr. O'Hara, thank you. You may step down.

4 We will take the lunch recess at this point. We'll
5 resume at two o'clock.

6 Jurors, this is our first recess since the evidence
7 has begun. Please, no discussion of any of the evidence among
8 yourselves or otherwise. We'll see you at two o'clock.

9 THE CLERK: All rise for the Court and jury. The
03:45 10 Court will take the recess.

11 (The Court and jury exit the courtroom and there is a
12 recess in the proceedings at 1:02 p.m.)

13 (After the recess:)

14 THE CLERK: All rise.

15 (The Court enters the courtroom at 2:08 p.m.)

16 THE CLERK: Be seated.

17 THE COURT: I understood there was a 403 issue with
18 the videos. I've looked at the videos, which I think I've seen
19 what you intend, over the lunch break. I understand that -- I
04:52 20 don't know -- who am I addressing here?

21 MS. CONRAD: I'm sorry? I am.

22 THE COURT: Okay. From the status report --

23 MS. CONRAD: Yes.

24 THE COURT: -- it appears that the issue is with the
25 audio --

1 MS. CONRAD: Correct.

2 THE COURT: -- only?

3 MS. CONRAD: Yes.

4 THE COURT: I think I understand the issues. I don't
5 think we need extended argument.

6 My reaction is that the audio should be suppressed on
7 the second of the first three but is okay on the third of the
8 first three -- I guess on the first if there is an audio. I
9 focused on 2 and 3. And with the second witness, I think it's
04:53 10 okay as is.

11 MS. CONRAD: I'm a little confused because I only had
12 two in the status report. So when you say "three," I'm not
13 sure --

14 THE COURT: No, the first one is in three parts as I
15 saw it on the machine, and I was talking about the three parts.
16 A, B and C, I think it's called. Is that right?

17 MS. PELLEGRINI: Yes.

18 THE COURT: And it was the B part that I think the
19 audio should be suppressed on. C, it's okay. Can we do that
04:53 20 technically?

21 MR. BRUEMMER: Yes, your Honor. Would you like me to
22 turn the volume off or do you want to --

23 THE COURT: Yes. No, no, you do it. Well, only
24 because -- I mean, you have absolute control over it. This
25 would be secondary control of it and I think it's best...

1 All right. So with that solved, I think we can
2 proceed, then.

3 (Pause.)

4 THE COURT: Is she getting the witness?

5 MR. WEINREB: Yes, and she's going to let the witness
6 know about the Court's ruling so the testimony can be adjusted
7 appropriately.

8 Your Honor, just to clarify, I assume the Court's
9 ruling goes only to the audio and not the exhibit itself?

04:55 10 THE COURT: Yes.

11 THE CLERK: All rise for the jury.

12 (The jury enters the courtroom at 2:12 p.m.)

13 THE CLERK: Be seated.

14 THE COURT: Ms. Pellegrini?

15 MS. PELLEGRINI: Yes, your Honor. The government
16 calls Colton Kilgore.

17 COLTON KILGORE, duly sworn

18 THE CLERK: Have a seat. State your name, spell your
19 last name for the record, keep your voice up and speak into the
04:57 20 mic.

21 THE WITNESS: My name is Colton Kilgore, and my last
22 name is spelled K-I-L-G-O-R-E.

23 DIRECT EXAMINATION

24 BY MS. PELLEGRINI:

25 Q. Good afternoon, Mr. Kilgore. Would you tell the jury,

1 please, where you reside by naming the city and the state?

2 A. Asheville, North Carolina.

3 Q. And how long have you lived there?

4 A. I've lived there for four years.

5 Q. And who do you live there with?

6 A. I live there with my wife and my eight-month-old daughter.

7 Q. And are you employed at this time?

8 A. I am.

9 Q. All right. Can you tell the jury what you do?

04:57 10 A. Well, I, for the last four years, have been self-employed
11 as a mobile auto detailer, and I'm currently transitioning into
12 a technical director in a new job for a traveling sort of
13 Broadway-style production.

14 Q. And for that production, what do your duties entail?

15 A. They entail running sound, lighting, producing videos,
16 just to name the main ones.

17 Q. All right. And do you have any other background in video
18 and sound production?

19 A. Yes, I have a bachelor's degree in the electronic media
04:58 20 communications, and I've been into video production/photography
21 since high school just as a hobby.

22 Q. And, now, Mr. Kilgore, your wife is who?

23 A. Kimberly Kilgore.

24 Q. All right. And your extended family -- by that I mean --
25 I'm looking at Kimberly's family right now -- can you explain

1 who your mother- and your father-in-law are?

2 A. Yes. My mother-in-law is Mona DiMartino, my father-in-law
3 is David DiMartino, and Mona is -- she was running the
4 marathon, and that's why we were there that day.

5 Q. All right. So when you say "running the marathon," you're
6 referring to the 2013 Boston Marathon. Is that correct?

7 A. Yes, that's correct.

8 Q. All right. Let me just stay with your family for just a
9 second. In addition to Kimberly, does Kimberly have any
04:59 10 sisters?

11 A. Yes, she has one sister named Gina.

12 Q. All right. When you came to the marathon in 2013, who
13 came with you from the family group?

14 A. In our family group there was David and Mona, my wife, her
15 sister Gina, her brother Peter, Peter's girlfriend at the time,
16 Rebekah and her son Noah, as well as Kimberly's Aunt Paula.

17 Q. All right. Now, when you say "her son Noah," this would
18 be Rebekah's son Noah, correct?

19 A. Rebekah's son Noah.

04:59 20 Q. All right. And in 2013 do you know how old Noah was?

21 A. He was five.

22 Q. And when you came to Boston, did you come before the
23 marathon?

24 A. We did. We came a couple of days before and spent a
25 weekend just kind of doing touristy things: Going to Quincy

1 Market and Faneuil Hall, went to a Red Sox game the day before
2 and -- yeah, this was my first time here.

3 Q. And on the day of the marathon, can you tell us how that
4 day began for you?

5 A. Yeah, we were staying in a hotel outside the city. I
6 don't remember exactly where. But we kind of slept in a little
7 bit. My mother-in-law got dropped off at the start, and her
8 heat wasn't starting till later so we just spent the morning
9 kind of watching TV. And left late morning, hopped on the T,
05:00 10 and we rode -- we got off at about the 16-mile mark in the
11 marathon to watch Mona run by. And, yeah, we hung out there
12 until we saw her run by, and from that point we headed downtown
13 to watch the finish.

14 Q. Now, Mr. Kilgore, were you familiar with the marathon
15 route at that time in 2013?

16 A. No, not at all.

17 Q. Are you familiar with it now?

18 A. Yeah, somewhat.

19 Q. All right. Why are you more familiar with it now?

05:00 20 A. Because I ran the marathon in 2014.

21 Q. All right. And so from that location where you all went
22 to watch Mona run by, you said you went downtown. Where did
23 you go to?

24 A. We went -- I believe we took the T down to the Arlington
25 stop just past Copley because we didn't want to get off right

1 at Copley, so we could spend a little more time walking to the
2 finish line. And we met up with one of my father-in-law's
3 friends, Mike. And he kind of led us down different streets.
4 I remember walking up Newbury Street before cutting across to
5 Boylston right where the finish line where the photo bridge is.

6 Q. All right. And when you say "we," when you got to that
7 location on Boylston near the finish line, who was with you?

8 A. The group that I named earlier was -- so David was there;
9 Kimberly, my wife; Peter; Gina; Rebekah; Noah; Paula; and Mike,
05:01 10 the friend.

11 Q. And, Mr. Kilgore, did you have a camera with you that day?

12 A. I did.

13 Q. What kind?

14 A. A Canon 7D.

15 Q. All right. And did you take pictures of the scene?

16 A. I did. I was taking photos and video, because I do both,
17 and I had taken pictures of Mona running by at the 16-mile
18 mark, and had kind of just been snapping shots here and there
19 of the crowd and runners and just the general goings-on.

05:02 20 Q. All right. And before we get to the pictures and videos
21 that you took, can you describe for the jury the -- as a
22 first-time Marathon-goer, what were the crowds like?

23 A. They were a lot of fun. There was just a general sort of
24 party atmosphere. And, you know, I've been to parades and
25 events before but nothing quite like the Boston Marathon. And

1 really, I had no idea going into it that it would be such a
2 huge deal. But everyone was having a great time, the weather
3 was pretty nice. It was sunny but a little chilly so we had
4 jackets on. And, yeah, everybody was having a great time.

5 Q. And that location on Boylston Street, can you tell us a
6 little bit more about where you were, if you remember?

7 A. Yeah. So we had stopped at the photo bridge, and my
8 father-in-law, David, decided to stay there so that he could
9 get a picture of Mona crossing the finish line with the clock,
05:03 10 and the rest of our group pushed forward because we wanted to
11 kind of be more the direction the runners were coming from so
12 that I could get photos and video of Mona as she ran by. So
13 we -- our whole group except for David pushed forward until we
14 were standing kind of directly in front of LensCrafters.

15 Q. All right. Now, Mr. Kilgore, have you reviewed with me
16 three video clips?

17 A. Yes, I have.

18 Q. All right. And those three video clips, are those, in
19 fact, videos that you took that day in April 2013?

05:03 20 A. Yes.

21 Q. All right. Do you know some of the people who appear in
22 the videos?

23 A. I do.

24 Q. Are you also in the videos?

25 A. My voice is and my feet are. My shoes you can see.

1 Q. All right.

2 MS. PELLEGRINI: Can I pull up video -- I'm sorry.

3 11A, please. Before you start, Mr. Bruemmer.

4 Q. So, Mr. Kilgore, this is the first video. Can you tell us
5 briefly what we're about to see?

6 A. Yeah. So this video is one that I shot just as random
7 runners were coming by. I was switching between photos and
8 video, and this kind of just shows where we were standing and
9 kind of what the atmosphere was like.

05:04 10 Q. And does this fairly and accurately represent the scene
11 that you saw and recorded that day on April 15, 2013?

12 A. Yes.

13 MS. PELLEGRINI: Your Honor, the government moves 11A
14 into evidence.

15 THE COURT: Okay.

16 (Government Exhibit No. 11A into evidence.)

17 MS. PELLEGRINI: With that, can we play that, please.

18 (Video played.)

19 BY MS. PELLEGRINI:

05:05 20 Q. So, Mr. Colton, what appears on the screen right now is
21 the Boston Public Library. And is that where you were when you
22 were recording this, directly across from there?

23 A. Yes.

24 Q. All right. And are any of the family members that you
25 mentioned -- can you see any of them in this video or is this

1 just general?

2 A. It's just general. I think you may have been able to see
3 the top of someone's head but nothing that you would be able to
4 recognize them from.

5 Q. All right. Thank you.

6 MS. PELLEGRINI: Continue?

7 MR. BRUEMMER: That was the end.

8 BY MS. PELLEGRINI:

9 Q. So, Mr. Kilgore, after this video was shot, what is the
05:06 10 next thing that you remember happening?

11 A. After I shot that video, I took a couple of photos. And
12 the last photo I snapped, it must have been right after I took
13 the picture, was when I was blown through the air. And there's
14 a deafening explosion. I remember just kind of seeing faces
15 and bodies tumbling through the air. And I hit the ground and
16 had no idea what was going on, had several thoughts go through
17 my mind, like what happened. Was there a celebratory canon
18 that went off or a fireworks display that went bad.

19 But as I was sitting up my brain kind of was in a haze and
05:06 20 I couldn't hear out of my left ear and there was just
21 screaming. And I realized, no, this was something much worse
22 than that, and it must have been a bomb. And as this was all
23 happening I -- my camera is on a strap on me, and I just hit
24 "record" and continued recording video as I got up and found my
25 wife, made sure she was okay, and then tended to all of our

1 family members who were severely injured.

2 Q. All right. So why did you hit "record"?

3 A. I hit "record" because it is just a reflex to me. It
4 becomes second nature. When I have my camera and something is
5 happening, I want to document it. And, yeah, it's just
6 I -- I've done that for years and years.

7 Q. All right. Now, with respect to 11B and 11C, the two
8 remaining video clips, have you had an opportunity to review
9 those prior to coming into court today?

05:07 10 A. Yes.

11 Q. And are these, in fact, videos that you recorded after the
12 blast at the Boston Marathon in 2013?

13 A. Yes.

14 Q. And do they fairly and accurately represent what both you
15 were seeing and what you were recording at that time?

16 A. Yes.

17 MS. PELLEGRINI: Your Honor, I would offer
18 Government's Exhibit B and C.

19 THE COURT: All right, subject to the ruling.

05:08 20 MS. PELLEGRINI: Right.

21 (Government Exhibit Nos. 11B and 11C received into
22 evidence.)

23 BY MS. PELLEGRINI:

24 Q. So, Mr. Kilgore, we're going to start with Exhibit 11B.

25 And I'd like to, before we start, ask you to briefly explain to

1 the jury what they're about to see.

2 A. In this video you are going to see a lot of chaos and a
3 lot of people on the ground. There is smoke, there's shrapnel
4 on the sidewalk that's smoking, there are people who are
5 injured. And I believe in this video you will see Rebekah's
6 leg injury. And, yeah, that's --

7 Q. Now, during the time that this was being recorded,
8 what -- you said you -- it was a deafening sound the first
9 time. And then did that affect your hearing?

05:09 10 A. Yes, it perforated my eardrum and -- yeah, it affected my
11 hearing. I couldn't hear for about a month after that.

12 Q. But while this was going on, could you hear anything?

13 A. I could -- yeah, I could hear -- my right ear was fine but
14 I had ringing in this ear, but I could hear muffled sounds and
15 the screaming. And at one point I remember hearing the second
16 blast and people commenting on it but having no idea what that
17 meant because I was trying to stay focused on where I was.

18 Q. And was there any smell that you recall?

19 A. Yes. The smell of smoke, kind of gunpowdery, blood,
05:09 20 flesh. Just acrid, disgusting.

21 Q. All right. And with respect to what you were seeing on
22 the ground, could you describe that for us?

23 A. On the ground I remember seeing just chunks of metal, sort
24 of like ball-bearings, BBs. At one point I was
25 sitting -- because I was -- my sister-in-law, Gina, had -- she

1 had had an artery and nerve severed in her right leg, and so
2 she was laying there. And I had her lay back in my lap, and as
3 I sat, I sat on something that burned me, and I realized that
4 everybody laying there was just laying on this burning metal
5 shards of stuff and glass and all kinds of just random stuff.

6 Q. All right.

7 MS. PELLEGRINI: Can we start 11B, please,
8 Mr. Bruemmer. And stop at 5.

9 (Video played.)

05:10 10 Q. Mr. Kilgore, do you know who this is?

11 A. Yes; that's Noah.

12 Q. And what's happening here?

13 A. At this moment Noah is screaming and everyone around us is
14 trying to figure out what happened. And there's yelling,
15 there's crying. Noah had a shrapnel wound in his leg and so he
16 was -- you know, as a five-year-old boy, obviously, like the
17 rest of us, was terrified but didn't know where his mom was,
18 didn't know what was happening.

19 At the same time my wife, Kimberly, is standing up, going
05:11 20 to take her jacket off and wrap it around her sister's leg as a
21 tourniquet. And this is her Aunt Paula you see right here with
22 the phone in her back pocket, and she's also doing the same.

23 Q. Right here, the pocket?

24 A. Uh-huh.

25 Q. All right. Thank you. Continue.

1 (Video played.)

2 MS. PELLEGRINI: Can we stop a second, Mr. Bruemmer?

3 Q. Mr. Kilgore, do you remember where your camera was when
4 it's taking the shot from this angle?

5 A. It was on the ground. At one point I set it on the ground
6 while I stood up to find my wife, make sure she was okay. And
7 as things were happening -- and it was just general chaos -- I
8 kind of shifted the camera at one point and I moved it over
9 here on the ground, put it back over my shoulder on the strap
05:12 10 at one point later on.

11 Q. All right. Do you remember seeing these?

12 A. Maybe not those specifically but other items like it.

13 Q. And were those there prior to the blast?

14 A. No.

15 MS. PELLEGRINI: You could continue on, Mr. Bruemmer.

16 (Video played.)

17 MS. PELLEGRINI: If we could stop right here.

18 Q. And, again, do you know what happened to the camera when
19 it was in this position?

05:13 20 A. I had set it down on the ground.

21 MS. PELLEGRINI: Thank you. Can you continue?

22 (Video played.)

23 Q. And the smoke that's coming in from the side, do you know
24 where that was coming from?

25 A. Some piece of burning material.

1 MS. PELLEGRINI: Stop right there, please.

2 (Video played.)

3 Q. Mr. Kilgore, what are we seeing here?

4 A. That is my sister-in-law Gina's leg, and that's blood you
5 see flowing on the sidewalk that most likely came from her
6 severed artery.

7 MS. PELLEGRINI: Continue.

8 (Video played.)

9 Q. And with respect to 11C now in evidence --

05:14 10 MS. PELLEGRINI: If we could have that, Mr. Bruemmer.

11 (Video played.)

12 Q. Before we start -- so, Mr. Kilgore, what's happening here
13 that we're about to see?

14 A. On this clip it's more of the same but by this point first
15 responders had come in and I've -- I was a Boy Scout growing up
16 and have basic first aid knowledge, but the one thing I do know
17 is when people who know more than I do are on the scene, to not
18 get in their way. So I was just trying to be there and comfort
19 Gina and also listen to what the first responders were telling
05:15 20 me to do. And during that time, like I said before, having a
21 camera in front of me is something that's kind of second nature
22 and it was something I knew how to do, so I just was pointing
23 my camera around.

24 Q. And with respect to the shot that is on the screen at the
25 moment, do you know who this is?

1 A. I believe that is Karen Rand.

2 MS. PELLEGRINI: If we could play it, Mr. Bruemmer.

3 (Video played.)

4 Q. Mr. Kilgore, who's this?

5 A. That is my sister-in-law, Gina DiMartino.

6 Q. And what is happening here?

7 A. Right here -- she is in shock. We -- my wife had tied her
8 jacket around Gina's leg, and I went over and at one point I
9 leaned her back into my lap to try to just comfort her and to
05:16 10 tell her to keep breathing, keep breathing, while first
11 responders came over and checked out her leg and eventually
12 asked if I had a belt on, and I gave them my belt, which they
13 used as a tourniquet on her.

14 (Video played.)

15 Q. Do you know the gentleman here?

16 A. Yes. That's my brother-in-law, Peter DiMartino.

17 Q. And behind him is who, if you know?

18 A. The arm that's holding his head in the pink shirt there,
19 that's my wife Kimberly.

05:17 20 MS. PELLEGRINI: Thank you. Keep going.

21 (Video played.)

22 Q. Mr. Kilgore, we just saw a woman's face that's down here.
23 It would be on the other side of Peter. Do you know who that
24 is?

25 A. I didn't see the face in that shot but I know that on the

1 other side of Peter was Rebekah.

2 Q. All right. And Rebekah was Peter's girlfriend?

3 A. At the time, yes.

4 Q. Okay.

5 (Video played.)

6 Q. The little boy we just saw?

7 A. That was Noah.

8 Q. All right.

9 MS. PELLEGRINI: You can go ahead.

05:19 10 (Video played.)

11 Q. And whose leg is this?

12 A. This is Rebekah's leg.

13 Q. And why were you filming her leg?

14 A. Well, like I said earlier, I was sitting there, and as you
15 could see, there were first responders who were kind of
16 instructing me what to do and I was waiting to be told if I
17 should stand up or if I should help with something. And
18 Kimberly was sitting there between Peter and Rebekah and
19 pointed at Rebekah's leg, and so I just swung my camera that
05:20 20 way.

21 Q. What do you remember you seeing about her leg?

22 A. Oh, I remember seeing her leg, it was right next to me,
23 and thinking there is no way she's going to keep that foot.

24 Q. Why?

25 A. It was so severely damaged that -- I mean, bones were

1 sticking out of it. I've never seen anything like that before.
2 And, you know, just the -- just realizing like it's -- it would
3 be impossible for a doctor to save that.

4 MS. PELLEGRINI: We can continue, Mr. Bruemmer.

5 (Video played.)

6 Q. Mr. Kilgore, we just heard someone yell the name "Colton."
7 Who is that?

8 A. That was my wife Kimberly.

9 Q. Okay. And what was she asking you or expecting you to do?

05:21 10 A. She said, "Stay with Gina" so that Gina would have someone
11 with her to get her into an ambulance, and Kimberly ended up
12 staying with Rebekah, and Paul ended up staying with Noah until
13 he got to the hospital. So I stayed with Gina. And I don't
14 know if you see it in the video, in a second I was asked to
15 stand up and step out of the way, which I did, but I waited
16 until Gina was pulled out and put into a wheelchair, and we
17 then walked down Boylston Street away from the finish line and
18 eventually got her into an ambulance.

19 MS. PELLEGRINI: If we could continue playing.

05:22 20 (Video played.)

21 Q. Mr. Kilgore, what's happening here? Where are you going?

22 A. At this point I had stepped back because one of the first
23 responders asked me to step and just wait until they could get
24 Gina out. So I stood back. And I was standing there, half in
25 shock myself, I just was kind of pointing my camera around, and

1 a police officer came up to me and told me to stop and pushed
2 me out of the way, at which point I said, "I was just in that.
3 Can you look at me and make sure I'm okay?" because my jeans
4 had been blown apart and my legs had cuts and burns on them and
5 I could barely hear out of this ear. And so I was trying to
6 explain to him that I was in that and I was waiting for my
7 family to get taken out so I could stay with them.

8 Q. Now, you told us about somebody using your belt for a
9 tourniquet. Did you also use part of your jeans?

05:24 10 A. I tried to. When I realized that my jeans had been blown
11 apart, kind of from the knee down, I looked at the -- the seam
12 on my jean had kind of come like this, and I tried ripping it
13 but I didn't have anything to cut it with, so I grabbed a
14 random person, I don't remember if it was a police officer or
15 someone working at the marathon, and they had either a knife or
16 scissors and they cut it and they took it and I hope used it as
17 a tourniquet. But that was definitely my intention when I was
18 ripping my jeans.

19 MS. PELLEGRINI: Okay. Can you continue to play it.

05:25 20 (Video played.)

21 Q. Mr. Kilgore, you said that you left the area by walking
22 down Boylston Street?

23 A. Yes.

24 Q. All right. And from that area, where did you go to?

25 A. The -- so we walked down Boylston Street, probably past

1 the second bomb site -- I just remember walking for a very long
2 time -- until we got to the point where ambulances were being
3 pulled in. At that point I helped pick Gina up out of the
4 wheelchair, put her on a stretcher, and they loaded her into
5 the ambulance. And I tried to get in with her but they
6 wouldn't let me because there was another person in there who
7 had lost a leg. So I quickly wrote down the ambulance company
8 and the number that the ambulance had written on the side of it
9 because I didn't know if I would be able to track Gina down.

05:26 10 So her ambulance left, and then some EMTs had me lay down
11 and they cut my jeans open further to make sure that I didn't
12 have any injuries that I didn't know about. And after that, I
13 climbed into an ambulance with two other people and they drove
14 us to Massachusetts General Hospital.

15 Q. Now, before we go to Mass. General --

16 MS. PELLEGRINI: Can we pull up Exhibit 8, which I
17 believe is already in evidence?

18 Q. Mr. Kilgore, I would like you to take a look at this
19 photograph and ask you if you see yourself in there?

05:27 20 A. I do.

21 Q. And you can, by touching the screen, and I recommend the
22 pad of your finger, point out where you are in that photograph?

23 A. Right there.

24 Q. And can you tell us who is around you, if you know?

25 A. Yes. So there's a pink shirt to my left, a pink kind of

1 plaid shirt. That's my wife. And then -- can I touch the
2 screen again to show you?

3 Q. Yes.

4 A. Right here is Gina, and over here is my father-in-law's
5 friend Mike. And I don't think you can see him, but Peter is
6 in here somewhere, probably blocked by one of our bodies.

7 Q. And, Mr. Kilgore, given your location here, where is this
8 in relation to where you were standing before the bomb went
9 off?

05:28 10 A. It's hard to tell. And I've tried to figure it out myself
11 just from looking at different photos and video, but I was
12 definitely knocked off my feet in this direction and probably a
13 couple of feet away from where I was standing when the bomb
14 went off.

15 Q. All right.

16 MS. PELLEGRINI: Thank you, Mr. Bruemmer.

17 Q. Now, when you got to Mass. General, what happened?

18 A. When I got to the hospital, they made me sit in a
19 wheelchair and they pushed me into the ER. And I was just
05:29 20 taken in to get looked at. And a doctor came in and checked
21 out my ear and told me that it was perforated. And they
22 examined -- I had very minor burns on the side of my arm and my
23 leg had lots of cuts and scrapes, and they pretty much told me,
24 "You're going to be okay. We can keep you here longer if you
25 want to, you know, clean your wounds, but if you need to get

1 out of here quickly to find family, you can clean them yourself
2 later on in the shower" or something. And I said, "Yes,
3 please, just let me go."

4 And while I was sitting in there waiting for the doctor to
5 see me, I was texting my wife, Kimberly, who I had no idea
6 where she was, finally found out she was at Beth Israel with
7 Rebekah, and she was trying to piece together where the whole
8 family was. So we found where everyone was except for my
9 father-in-law whose phone had died, and at that point we didn't
05:29 10 know where he was or if he was alive or injured or anything
11 like that.

12 So after they let me leave, I went to the desk and I asked
13 them to look up in their database if anyone with the last name
14 "DiMartino" was there, and they found Peter and they told me he
15 was about to go in for -- I believe it was a CAT scan. And so
16 they took me to him as he was being wheeled through the halls
17 and I told him, "Hey, I'm here, man. I'll be here waiting when
18 you get out."

19 And they took him in behind the doors, and while I was
05:30 20 standing in the hallway waiting for that scan to be finished,
21 that's when my father-in-law, David, came walking around the
22 corner. And he had walked to the hospital from the finish line
23 with a dead cell phone.

24 Q. And did you find out what injuries Peter suffered?

25 A. Yeah. So Peter had a 90 percent tear of his Achilles

1 tendon in addition to other burns on his back and legs, lots of
2 shrapnel embedded in his legs.

3 Q. And Gina?

4 A. Gina had a severed artery and nerve in her right lower
5 leg.

6 Q. And, Mr. Kilgore, were you able to -- let me ask you this:
7 When did you go home?

8 A. I went home about two weeks after the bombing happened.
9 We stayed in Boston to give support to our family who were all
05:31 10 in the hospital, but after about two weeks of that, it was time
11 for us to leave. And I -- being self-employed at the time, I
12 had no one to work for me and had no way of supporting my
13 family if I didn't go home. So my wife and I left, it was
14 either the last week of April or first week of May, and went
15 back home to North Carolina.

16 MS. PELLEGRINI: Thank you.

17 May I have a minute, your Honor?

18 (Counsel confer off the record.)

19 MS. PELLEGRINI: Thank you, Mr. Kilgore. I have no
05:32 20 further questions.

21 MS. CONRAD: I don't have any questions. Thank you.

22 THE COURT: No questions? Okay. Thank you, sir. You
23 may step down.

24 (The witness is excused.)

25 MR. MELLIN: Your Honor, the United States calls

1 Rebekah Gregory.

2 REBEKAH GREGORY, duly sworn

3 THE CLERK: Have a seat. State your name and spell
4 your last name for the record, keep your voice up and speak
5 into the mic so everyone can hear you.

6 THE WITNESS: Okay. Rebekah Gregory, R-E-B-E-K-A-H
7 G-R-E-G-O-R-Y.

8 DIRECT EXAMINATION

9 BY MR. MELLIN:

05:33 10 Q. Good afternoon.

11 A. Hi.

12 Q. Where do you live?

13 A. I live in Houston, Texas.

14 Q. And where did you grow up?

15 A. I grew up in Louisville, Kentucky.

16 Q. When did you move to Texas?

17 A. About eight months before the marathon, so June 2012.

18 Q. What were you doing in Texas at that time?

19 A. I was working in corporate housing.

05:33 20 Q. Okay. As you walked in here today, for the record, you
21 came into court with a prosthetic device on your left leg. Is
22 that right?

23 A. Yes; that's correct.

24 Q. When did you have surgery to remove the lower part of your
25 left leg?

1 A. November 10th of 2014.

2 Q. When was your leg actually injured?

3 A. April 15, 2013, at the marathon bombings.

4 Q. What brought you to Boston back in April of 2013?

5 A. My mother-in-law was running the race, my boyfriend's mom
6 at the time. And we had come there for my birthday weekend.

7 And we had toured the city. And we were just watching her run.

8 And we were all packed up and ready to go home that day. And

9 at first we went to the 17-mile marker to watch her and held up

05:34 10 our signs, and we wanted to make our way closer to the finish

11 line to actually see her finish the race.

12 Q. Up to that point had you ever run a marathon before?

13 A. Heck, no.

14 (Laughter.)

15 Q. Had you ever run a half marathon?

16 A. Yes, a couple of years ago I tried for a half marathon,
17 and I was wondering why in the world people did this for fun
18 because it was quite torturous.

19 Q. So when you went to the 17-mile mark and she went by, what
05:35 20 did you do?

21 A. We were holding up our signs, cheering, excited. And we
22 just -- that's when we had decided that we wanted to get
23 closer.

24 Q. And when you went to get closer, where did you go?

25 A. We went right in front of LensCrafters, I believe. And we

1 were just trying to get as close to see her actually cross the
2 line.

3 Q. Who was with you at that point when you were in front of
4 LensCrafters?

5 A. We had a group of nine of us. It was my boyfriend at the
6 time, his two sisters, his brother-in-law and his dad and his
7 aunt and then another family friend.

8 Q. Did you have your son with you as well?

9 A. Yes, also my son. I'm sorry.

05:35 10 Q. And your son's name, for the record, is what?

11 A. Noah.

12 Q. And how old was Noah in 2013?

13 A. Noah was five at the time.

14 Q. When you got to that location, what did you do?

15 A. When we got to that location, we were just trying to wait
16 around. And we were watching the runners. And they were
17 coming this way. So we were kind of looking at them. And I
18 was a little nervous because there were so many people around.
19 And so I was trying to keep up with Noah, who you can imagine
05:36 20 was very bored, being five years old. And I actually told him
21 to sit down on my feet and wait till the race was finished and
22 just play in the rocks, as if he was a scientist. And that was
23 kind of stretching it because we were on the asphalt,
24 obviously. But he luckily thought that was a very cool idea
25 and he sat down on my feet. And that was actually where he was

1 when the first bomb went off.

2 Q. What do you remember about that?

3 A. I remember pretty much everything. I remember being
4 thrown back -- hoisted into the air and thrown back and I
5 remember trying to kind of get up, and I couldn't. I couldn't
6 really raise up too much. And I was looking all around to try
7 to figure out kind of what was going on. My first instinct as
8 a mother where in the world was my baby? Where was my son?
9 And I kept moving my head around trying to figure out what had
05:37 10 happened to him and where he was. And I looked down. And at
11 the time I couldn't see my legs. My bones were literally
12 laying next to me on the sidewalk, and blood was everywhere,
13 and pools of BBs and nails and shrapnel and things from the
14 bomb were all over the place, and people's body parts were also
15 laying everywhere.

16 Q. At that point how did you feel?

17 A. At that point I thought that was the day I would die.

18 Q. Were there any -- anything burning around you or on you?

19 A. I could not -- my left hand was hurting, like it was
05:38 20 burning. And I was trying to figure out, you know, where Noah
21 was. And he ended up being in the back of me. And so I raised
22 my head to kind of look. And my instinct was to lift up my arm
23 to try to drag him towards me, and when I lifted up my arm, my
24 bones and all of my flesh was sticking out of my left hand and
25 blood was running down my arm. And so at that point I was

1 completely helpless as a mother and I could do nothing to help
2 Noah.

3 Q. Could you hear others around you?

4 A. I could faintly hear. But the bomb had blown out my
5 eardrums and so everything was very muffled. So I saw the
6 terror on everyone's faces as I kind of scanned around. I
7 could hear Noah, and I don't know how, but I could hear my
8 little boy.

9 Q. And what was your little boy saying?

05:38 10 A. "Mommy," "Mommy," "Mommy," over and over and over again.

11 Q. At some point did you actually just lay back and lay down
12 on the pavement?

13 A. Yes. I laid down on the pavement and I said a prayer. I
14 said, "God, if this is it, take me but let me know that Noah is
15 okay." And right around that time the -- Aunt Penny who was
16 with us picked Noah up and placed him down beside me, and I
17 knew that he was going to be all right at that point.

18 Q. Do you know what happened to Noah after that point?

19 A. Noah was taken to a separate hospital. Later I found out
05:39 20 he was taken to Boston Medical. And they rushed me to Beth
21 Israel.

22 Q. As you sit here today, do you know someone by the name of
23 Krystle Campbell?

24 A. Yes, I do. I don't know her personally.

25 Q. At some point after that explosion, did you hear or see

1 Krystle Campbell?

2 A. I did. As I was scanning -- as I was scanning the crowd
3 for my little boy I looked to the right and kind of in back of
4 me and I saw Krystle Campbell. And she was dead.

5 Q. At some point were you taken -- there's a Kleenex to your
6 right if you need one.

7 At some point were you taken from the scene on Boylston to
8 the hospital?

9 A. I was, yes.

05:40 10 Q. Do you recall that trip?

11 A. I do.

12 Q. Can you tell us about it?

13 A. They tied a tourniquet around my leg to try to stop some
14 of the bleeding, and the medical personnel put me on the
15 ambulance. And I could see them mouthing, "We have an
16 amputee." And he kind of got right up in my face and said,
17 "This is really bad. This is really, really bad but we're
18 going to help you." And he just kept saying over and over, "We
19 have an amputee. We have an amputee." And so I knew at that
05:41 20 point that if I didn't die, that my legs would be gone.

21 Q. Did anyone ride in the ambulance with you?

22 A. Later I found out that Erica Brannock was in the same
23 ambulance.

24 Q. Did you notice any of her injuries while you were in the
25 ambulance?

1 A. I did not.

2 Q. Okay. When you got to the hospital, what happened?

3 A. When I got to the hospital, they immediately rushed me
4 into emergency surgery and put me in a medically induced coma.

5 Q. Do you know how long you were in a coma?

6 A. I was in for about a week, and I was kind of like in and
7 out of consciousness for the first two.

8 Q. How long were you actually in the hospital?

9 A. I was in the hospital for 56 days total.

05:41 10 Q. How many days in Boston?

11 A. Thirty-nine days in Boston.

12 Q. And then at some point were you transferred to Houston?

13 A. Yes, I was Medflighted to Houston where they could do more
14 surgery.

15 Q. Did they do more surgery in Houston?

16 A. Yes, they did.

17 Q. Okay. How many surgeries had you had on your left leg
18 before it was amputated?

19 A. On my left leg I've had 17 surgeries. Or I had 17, and
05:42 20 then the amputation made it 18.

21 Q. In addition to the injuries to your leg, what other
22 injuries did you have?

23 A. I had shrapnel injuries to my right leg and some fractures
24 and some broken bones. My left hand was injured. It was
25 crushed. And I had -- the bomb shifted all of my teeth. Two

1 of my teeth fell out and caused internal bleeding, and my
2 eardrums were blown out as well.

3 Q. And what about Noah? What injuries did Noah have?

4 A. Noah had a cut to his bone on his right leg from shrapnel,
5 he has a bald spot on the back of his head from shrapnel also,
6 and he had some GI bleeding.

7 Q. As you sit here today, do you still have any foreign
8 objects in your body?

9 A. I do. Pieces of shrapnel.

05:43 10 Q. What have the doctors told you about that?

11 A. They said that it would eventually just kind of work its
12 way out and when it came to the surface I would just have to
13 have it removed. I had some asphalt removed. When I had my
14 amputation, on my right leg I had it removed. So it's just
15 kind of one of those things, every once in a while I'll have to
16 have it done.

17 Q. After your amputation in November of 2014, at some point
18 did you get a prosthetic leg?

19 A. I did. I got to take home my leg on January 7th of 2015.

05:43 20 Q. Just about two months ago?

21 A. Yes.

22 Q. And recently have you actually started using a blade to
23 run again?

24 A. I have. The last -- I believe it was two weeks ago I
25 tried a blade for the first time.

1 Q. If I could have you look at a few photographs. Before you
2 came in here today, did I ask you to take a look at a couple of
3 photographs?

4 A. Yes.

5 Q. Okay. Do you know if those photographs fairly and
6 accurately depict the scene on April the 15th of 2013?

7 A. Yes, they do.

8 MR. MELLIN: If I could -- actually, your Honor, at
9 this point move into evidence Exhibits 18, Exhibit 1473,
05:44 10 Exhibit 12 and Exhibit 16. So 12, 16, 18 and 1473.

11 THE COURT: Any objection?

12 MS. CLARKE: No.

13 THE COURT: Okay. Admitted.

14 (Government Exhibit Nos. 12, 16, 18 and 1473 received
15 into evidence.)

16 MR. MELLIN: Pull up Exhibit 18, please.

17 BY MR. MELLIN:

18 Q. Just for the record, can you describe what we're looking
19 at in Exhibit 18?

05:44 20 A. Sure. This was while we were watching all the marathon
21 runners cross the finish line.

22 Q. And this is before the explosion?

23 A. Before the -- yes, before the explosion.

24 Q. As you look at this picture, who do you see in the
25 photograph?

1 A. In the right-hand corner on the bottom I can see my
2 sister-in-law Gina in the kind of teal hoodie and headband.

3 Q. You can actually touch the screen.

4 A. Oh, I'm sorry.

5 Q. That's fine.

6 A. This is Gina, and then this is my sister-in-law Kimberly
7 (indicating).

8 Q. And for the record, that's the woman on the far right with
9 the dark hair?

05:45 10 A. Yes.

11 Q. All right.

12 A. And then the little boy right here, I'm standing kind of
13 between them at this point, is Noah.

14 Q. Is he wearing some type of cap or something?

15 A. Yes, he is. He's wearing a Boston Red Sox hat.

16 And then to the left of Gina is Penny.

17 Q. Can you also see yourself in that?

18 A. I can see myself. I'm right here next to Kimberly in the
19 blue hoodie.

05:45 20 Q. There you go. Okay. Thank you.

21 MR. MELLIN: And then if we could have Exhibit 1473.

22 Q. If you could touch the screen, on the top right -- there
23 we go. As you look at Exhibit 1473, not the clearest
24 photograph ever, but do you see yourself in that?

25 A. Yes, I do. I'm in the blue hoodie right here.

1 Q. Thank you. And is there anyone else you recognize that's
2 in this photograph?

3 A. Pete is in this photo next to me, my boyfriend at the
4 time.

5 Q. All right. As you look at this photograph, do you know
6 this individual, or had you seen this individual right here
7 that I circled in magenta in the middle of the picture with the
8 black baseball cap?

9 A. No, I hadn't seen him.

05:46 10 Q. Thank you.

11 MR. MELLIN: If we could please pull up Exhibit 12.

12 Q. For the record, again, what is Exhibit 12?

13 A. This is after the bomb went off. I'm laying right in the
14 middle, right here; Pete is a little to the left of me standing
15 up, my sister-in-law Gina is right here.

16 Q. And for the record, you circled Pete standing up, is
17 essentially in the middle of the photo --

18 A. Yes.

19 Q. -- with kind of a gray sweatshirt on?

05:47 20 A. Yes.

21 Q. All right. And Gina is laying --

22 A. Has the teal sweatshirt.

23 Q. Thank you.

24 A. Kimberly in the black hoodie right here, Penny is in the
25 green jacket, and brother-in-law Colton is right here.

1 Q. Okay. And for Colton, is that the individual -- the male
2 on the right side of the photo that has on a black shirt?

3 A. Yes; that's correct.

4 Q. Okay. As you look at Pete in that picture, can you
5 describe his clothing and what we see?

6 A. Pete's pants were essentially turned into shorts at that
7 point. They had been blown off of his body. And I believe his
8 shirt might have been messed up too.

9 Q. And then finally, if I could have you look at Exhibit 16.
05:48 10 For the record, what is Exhibit 16?

11 A. Sixteen is also after the blast went off.

12 Q. And in this can you -- in this mass of people in the
13 middle, are you able to see yourself?

14 A. Yes. I am right here kind of behind Kimberly in the black
15 hoodie.

16 MR. MELLIN: If I may have a moment, your Honor?

17 (Counsel confer off the record.)

18 MR. MELLIN: Thank you.

19 MS. CLARKE: No questions, thank you.

05:49 20 THE COURT: No questions? All right, ma'am. Thank
21 you. You may step down.

22 THE WITNESS: Thank you.

23 (The witness is excused.)

24 MS. PELLEGRINI: The United States calls Sydney
25 Corcoran.

1 MS. CONRAD: May we approach, your Honor? There is an
2 issue on one of the exhibits.

3 THE COURT: I thought we addressed it.

4 MS. CONRAD: I'm sorry. I didn't know what the ruling
5 was on this one.

6 THE COURT: This one I was going to permit. I
7 addressed both groups of videos.

8 SYDNEY CORCORAN, duly sworn

9 THE CLERK: Have a seat. State your name, spell your
05:50 10 last name for the record and speak into the mic.

11 THE WITNESS: Sydney Corcoran, S-Y-D-N-E-Y
12 C-O-R-C-O-R-A-N.

13 DIRECT EXAMINATION

14 BY MS. PELLEGRINI:

15 Q. Good afternoon, Ms. Corcoran. Will you tell the jury how
16 old you are today?

17 A. I'm 19.

18 Q. And what city and town do you live in?

19 A. I live in Lowell, Massachusetts.

05:50 20 Q. And who do you live with in Lowell?

21 A. I live with my mother and my father and my brother.

22 Q. All right. And your mom and dad's name are what?

23 A. Celeste Corcoran and Kevin Corcoran.

24 Q. And do you go to school now?

25 A. I do. I go to Merrimack College.

1 Q. And what year are you in?

2 A. I am a sophomore. And I study psychology.

3 Q. And, Ms. Corcoran, I'm going to direct your attention to
4 April 15th of 2013. Did you have occasion to attend the Boston
5 Marathon?

6 A. I did.

7 Q. All right. Now, had you ever been to the marathon before
8 2013?

9 A. No; it was my first time going.

05:51 10 Q. But are you familiar with that area of downtown Boston,
11 particularly Newbury Street?

12 A. I'm very familiar with that area. My mother works on
13 Newbury Street. She's worked in Boston for a long time, and I
14 usually -- I made a habit of going into work with her and just
15 shopping in that district. So I was very familiar with the
16 area.

17 Q. All right. But you had never been to the marathon before?

18 A. No.

19 Q. All right. So what made you go that year?

05:52 20 A. My Aunt Carmen Acabbo was running, and it was the first
21 time she'd ever ran. And it was her first marathon ever. And
22 we just wanted to support her. We were so proud of her. She
23 had never done anything like that before.

24 Q. And so when did you leave Lowell to come into Boston that
25 day?

1 A. We left really early in the morning. We were afraid that
2 we weren't going to find a parking spot and that -- we knew
3 that the city was going to be, like, chaotic. So we wanted to
4 make sure that we got there fairly early so the streets weren't
5 too bad, and we just wanted to make sure that we got a good
6 spot.

7 Q. Now, when you say "we," who did you go with?

8 A. I went with my mom, Celeste, my dad, Kevin.

9 Q. And so when you first went in, into Boston, where did you
05:53 10 go to?

11 A. When we first got into Boston, we spent the morning by the
12 harbor. And we were out on a dock just enjoying the day. We
13 just had to kill time, so we were there for a while. And as
14 the day went on, we met up with some friends, we went shopping
15 with them for a little while, we had lunch. And then we were
16 tracking my aunt through our phones. So once we got the
17 alert that she was getting close, we made our way down to the
18 finish line.

19 Q. All right. And where did you go to in the finish line
05:53 20 area?

21 A. We made a point to meet up under the really big screen,
22 the Jumbotron. We met there, and then we made our way to right
23 in front of Marathon Sports. We were a little bit a ways from
24 it at first, and we were trying to get as close as we could so
25 that we could see her cross the finish line. So once we got

1 there, people were shuffling in and out, and whenever we could,
2 we would like weasel our way in to try to get closer so we
3 could see her. So we got fairly close. We were right across
4 from the stands.

5 Q. All right. Sydney, I forgot to ask you, so in 2013, on
6 that Monday, how old were you?

7 A. I was 17.

8 Q. And were you in school then?

9 A. I was a senior in high school.

05:54 10 Q. And how is it that you could go to the marathon that day?

11 A. That day was a holiday, so I did not have school that day.

12 Q. All right. And who was tracking your aunt's progress in
13 the race?

14 A. I was with my iPhone, and my mother was I think with her
15 Android.

16 Q. And how long do you think you were at Marathon Sports,
17 that area?

18 A. We weren't even there for ten minutes. We had just, just
19 made it to that spot, and it was a very brief period of time
05:55 20 that we were there and then everything went up in smoke.

21 Q. What happened?

22 A. So I remember -- I remember having my mom to the right of
23 me. And she was so happy for my aunt, that she was just trying
24 to get any kind of view. So she was holding onto my shoulders
25 trying to peek over the heads of people. And my dad was a

1 little bit behind us to our left. And we were just waiting for
2 her to cross. And the next thing I know, we're immersed in
3 smoke and our ears -- it's like leaving a concert and having
4 this ringing in your ears and everything is muffled and you
5 just hear stifled screams of people you can't see because if
6 you put your hand in front of your face, all you see is smoke.
7 And I immediately lost my family. Even though they were
8 probably feet away from me, I couldn't see them. It was like
9 everyone around me was gone.

05:57 10 I was in shock. I didn't know that I was injured. And I
11 remember feeling like half of my foot was gone, half of my
12 right foot, and I tried to put pressure on it thinking, like,
13 "Why does that feel funny?" And I actually started to like
14 limp. I couldn't put pressure on it.

15 So I managed to limp over to a rail and I grabbed onto the
16 rail. And I passed out for maybe a minute because the next
17 thing I know, I'm laying flat on my back on the ground and
18 there's these men around me putting massive amounts of pressure
19 on my thigh, they're taking off my shoes because they're
05:57 20 bloody, and they're trying to figure out where I'm bleeding
21 from and they're tying tourniquets to my thigh.

22 And I can remember a man putting his forehead to mine and
23 telling me that I was going to be okay and that I just needed
24 to hold on. And I remember another man knelt down beside me
25 and he told me to hold onto his shirt, and he wanted me to

1 squeeze as hard as I could. And he was telling the people
2 around me that he could see that I was going white and that my
3 eyes were going white, and I could feel my body going tingly
4 and I was getting increasingly cold. And I knew I was dying.

5 And I remember having moments of panic where I would look
6 around and see carnage and just blood on the street and I still
7 had no idea that -- I had no idea what had happened; I just
8 knew that it was bad. And I would have moments between that
9 and just kind of going back into myself and thinking, like,

05:59 10 "This isn't real. How can this be real? Everything was so
11 happy two seconds ago." And the next thing I know, they're
12 putting me on a gurney to be wheeled into the medical tent.

13 Q. At this time did you know where your mom and dad were?

14 A. I had no idea where they were. I had absolutely no idea
15 if they were alive. When I was being wheeled to the medical
16 tent I thought, "This is stupid. We're going to be killed by
17 something else. I don't know why we're moving." And the man
18 that brought me into the medical tent -- they were very frantic
19 and they kept saying, "She's got a femoral artery break. She
06:00 20 has to go. She has to go now. She's not going to make it. We
21 have to get her out of here." And I didn't know what that
22 meant. I thought that they were saying that a bone in my thigh
23 was coming out or just protruding, and I thought that that's
24 why they were applying the pressure.

25 Q. Did you later find out what that meant?

1 A. Yes.

2 Q. What did it mean?

3 A. So a femoral artery break meant that my femoral artery was
4 severed. I was bleeding from one of my main arteries. I was
5 bleeding out. And I had minutes.

6 Q. Ms. Corcoran, you said right after the bomb everything was
7 enveloped in smoke and you think you passed out. When you came
8 to, did you know where you were?

9 A. When I came to, I wasn't sure how I'd gotten on the ground
06:01 10 because I didn't remember laying down or sitting down and I
11 didn't remember falling. I knew that I was still on Boylston
12 but I was completely lost. I had no idea what was going on
13 around me.

14 Q. And you also mentioned like a railing?

15 A. Yup. There was a railing right outside of Marathon
16 Sports. I grabbed onto the side of it. And when I had fallen,
17 I had ended up on the side of it that was closest to the door
18 of Marathon Sports.

19 Q. Hold on a second.

06:02 20 MS. PELLEGRINI: May I have Exhibit 8, please,
21 Mr. Bruemmer.

22 Q. If you could take a look at that on your screen, Exhibit 8
23 already in evidence, and I'm going to ask you -- I'm going to
24 clear this. Actually, can you push on the "clear" in the upper
25 right? There you go.

1 And do you see yourself in this picture?

2 A. I do.

3 Q. And so by using the touchscreen that's in front of you,
4 can you tell the jury where you are?

5 THE JURORS: We don't have a picture.

6 THE COURT: Yes?

7 THE JURORS: Yes.

8 A. I am right where I circled.

9 BY MS. PELLEGRINI:

06:03 10 Q. All right. And is that your head?

11 A. Yes.

12 Q. Okay. And actually, if you could clear that again,
13 Ms. Corcoran, so we can get the arrow out of the way. I can
14 clear that? All right.

15 So with respect to the people who are here -- right here
16 I'm going to draw the circle -- when you were talking about the
17 two men talking to you, do you know if those are the two men?

18 A. At the time I had no idea who they were. They were
19 perfect strangers to me. Since then I've come to know them.

06:03 20 Q. Now, before the blast where were you in relation to this
21 spot?

22 A. Before the blast I was probably about right here
23 (indicating).

24 Q. All right. And do you know who this man is in the red
25 coat and the baseball cap?

1 A. Yes, I do.

2 Q. Who is that?

3 A. That's my father, Kevin Corcoran.

4 Q. Do you know where your aunt is in looking at this picture?

5 A. I'm not sure if she's being covered but -- oh, no, I think
6 I can see her. Right there, I think that's her head.

7 Q. So, Ms. Corcoran, so this railing --

8 A. Yes.

9 Q. -- right here, is that what you were referring to?

06:04 10 A. Yes.

11 Q. All right. And how were you walking along with, you know,
12 holding onto that?

13 A. I was limping along. I walked -- I walked back to that
14 railing and I made my way to that corner. If I can just circle
15 right here. I mean, I went to the back corner, and I believe
16 that that's where I most likely passed out and fell.

17 Q. All right. Now, Ms. Corcoran, prior to coming into court
18 today, have you had occasion to review a photograph and also a
19 video?

06:05 20 A. Okay.

21 Q. Is that -- no. The answer is yes or no.

22 A. Yes. Yes.

23 Q. Okay. And in doing so, do you recognize yourself in the
24 photograph and in the video?

25 A. Yes.

1 Q. All right. And does that photograph and does that video
2 accurately reflect what you remember about what happened to you
3 and where you were post the blast that we've just been talking
4 about?

5 A. Absolutely.

6 MS. PELLEGRINI: Your Honor, so the government would
7 enter -- would ask to enter Exhibit 13, which is a photo, and
8 Exhibit 14, which is a video which I believe has been reviewed
9 by the Court.

06:06 10 THE COURT: Okay. The objection was noted and
11 overruled.

12 MS. CONRAD: All right.

13 (Government Exhibit Nos. 13 and 14 received into
14 evidence.)

15 MS. PELLEGRINI: So could we have -- actually, can we
16 skip a little bit and go to 14, first Mr. Bruemmer? Okay. And
17 we can start.

18 (Video played.)

19 BY MS. PELLEGRINI:

06:06 20 Q. So, Ms. Corcoran, I'm going to ask you to look at what
21 I've circled here. Who is that?

22 A. That's me.

23 Q. All right. And do you remember being in this location?

24 A. Yes.

25 Q. Okay. And at this time do you -- again, do you know where

1 your parents are?

2 A. No.

3 Q. Do you know what has happened to you?

4 A. No.

5 Q. All right. And you said you felt cold?

6 A. Yes.

7 Q. Do you know why?

8 A. I was dying. The blood was leaving my body. I was
9 bleeding out.

06:07 10 Q. Were you -- I'm sorry. And you were talking about the two
11 men.

12 A. Yes.

13 Q. And do you know if a tourniquet was applied to your body?

14 A. Yes.

15 Q. And which leg are we talking about?

16 A. The right leg.

17 (Video played.)

18 Q. Okay. And you said you were with some other folks. Do
19 you know who this person is who is lying on the ground?

06:07 20 A. Yes.

21 Q. And who is that?

22 A. That's Ron Brassard. We met up with him, his wife, Karen
23 Brassard, and their daughter Krystara Brassard, and her friend,
24 Victoria.

25 Q. Now, had they been standing with you prior to the blast?

1 A. Yes.

2 (Video played.)

3 Q. And stopping it there, do you recall a policeman coming up
4 to you?

5 A. I do.

6 Q. Okay. And what happened at that point?

7 A. The policeman came up to me. He was trying to get me out
8 of there. He was trying to get me onto a gurney. After they
9 placed me onto the gurney and brought me to the medical tent,
06:08 10 he -- I can remember him being panicked and frightened, and I
11 remember everyone in the medical tent being so scared. And
12 they were ripping off my clothes and cutting through them
13 because they knew how severe I was. And once they strapped an
14 oxygen mask to my face, they put me on a stretcher and they led
15 me into an ambulance.

16 Q. I'm going to stop you right there.

17 (Video played.)

18 Q. Now, is this the railing again that I showed you in
19 Exhibit 8 and that you referred to?

06:09 20 A. Yes.

21 Q. Okay. And do you have any recollection of how you ended
22 up on the ground?

23 A. No.

24 (Video played.)

25 MS. PELLEGRINI: And may I have Exhibit 13 now in

1 evidence.

2 Q. Ms. Corcoran, do you recognize who's in this photo?

3 A. Yes.

4 Q. And is that you?

5 A. Yes.

6 Q. All right. And when you were talking about being strapped
7 to a gurney and oxygen mask, is that when this happened?

8 A. Yes.

9 Q. All right. What do you remember thinking when this was
06:10 10 happening?

11 A. I remember thinking that this was it, I'm going to die.
12 I'm not going to make it. And I remember feeling like I was
13 just going to sleep. And it just felt so cold. And I almost
14 felt peaceful because I just felt like I was going to sleep,
15 and I knew I was fading fast.

16 Q. What's the next thing you remember after that?

17 A. I remember being brought to the ambulance, and on our way
18 to the hospital the ambulance was cut off by a driver, and I
19 remember we had to come to such an abrupt stop that the EMT in
06:11 20 the back with me was actually thrown to the front. And because
21 I was strapped in so tightly, I was jostled. And I can
22 remember feeling blood pool out of my leg.

23 And I remember once we got to the hospital, they brought
24 me into the operating room and everyone around me was trying to
25 ask me what my name was and if there was a phone number that

1 they could have so they could contact someone for me. And I
2 remember telling them, "You don't understand. My parents are
3 both there too. They could be dead. I don't know."

4 And at that moment I thought I was an orphan. I thought
5 that my parents had been violently ripped away from this world
6 and that I was all alone. I remember feeling so panicked
7 because I couldn't remember my brother's phone number. He
8 wasn't there that day. And I thought that he was the only one
9 that I had left.

06:12 10 And in that small amount of time I can actually remember
11 thinking, "Oh, my God. My parents are gone. I'm going to have
12 to live with my brother. We're going to have to go live with
13 my aunt." But luckily, I was able to calm myself down
14 thinking, "You'll be okay. Your brother's old enough to take
15 care of both of you."

16 And I can remember asking them when they were going to put
17 me under because I was just in so much pain. At one point they
18 were applying so much pressure to my thigh that I actually
19 yelled out and screamed out in pain. And one man took down my
06:13 20 mother's phone number. He just got a pen and wrote it on his
21 pants. And after that, I remember they told me that I was
22 going to be okay and that they were going to do everything that
23 they could.

24 Q. Did you go into surgery that day?

25 A. Yes, I did.

1 Q. Okay.

2 A. They wheeled -- they then wheeled me away and into where
3 they were going to operate. And the next thing I remember is
4 waking up in a hospital room. And I was intubated, so I had
5 tubes in my throat and I couldn't speak and it was difficult to
6 breathe. And I remember my father was in the room. And I had
7 motioned for a pen and paper because I wanted to ask him if my
8 mother was even alive. And once he had seen what I had
9 written, he just started to cry softly and he looked at me and
06:15 10 he was like, "She's okay. She's alive." And he had told me,
11 "But she doesn't have her legs anymore."

12 And I can just remember telling him on the paper that I
13 thought I was an orphan. And he put his head down to mine and
14 he kissed my cheek and I fell back asleep. And when I woke
15 back up, there was a nurse in my room and she told me that they
16 were going to wheel my mother into the same room as me because
17 they wanted us to be together. And she told me that she wanted
18 to prepare me. So she said, "We're going to bring her in but I
19 just wanted to let you know so you're not scared, your mother
06:15 20 doesn't have her legs anymore."

21 Q. Both legs?

22 A. Both legs.

23 And I just said, "I don't care. I just want my mom. I
24 just know that she's alive and I just want to see her." And
25 they wheeled her in and we held hands and we were crying. We

1 were just appreciating that we were both still alive.

2 Q. Ms. Corcoran, that operation that you had, was that the
3 only operation you've had?

4 A. No.

5 Q. How many have you had since then?

6 A. It's hard to keep track. I would say about seven or
7 eight.

8 Q. And do you have any scars from your injuries?

9 A. Yes.

06:16 10 Q. Where?

11 A. I have a scar on the bottom of my foot, the top of my foot
12 because there was a hole blown through my foot, and I now am
13 missing bone and tendon in my foot. They had to do a
14 fasciotomy on my leg so I have two scars running down both
15 sides of my calf, I have a scar on my thigh from where a piece
16 of very large shrapnel entered my thigh. On the other side of
17 my thigh there's another one where they had to take it out. I
18 have another one running from mid-thigh to a little above my
19 hip where they had to go in and fix my artery, and I have
06:17 20 another scar on the other leg from where they had to go in,
21 harvest a vein and put it in the other leg to repair my broken
22 artery. And I have other less severe shrapnel scars.

23 Q. Do you still have shrapnel in your body as far as you
24 know?

25 A. I used to have a BB that was stuck in my thigh but I've

1 since had that removed, and the only shrapnel that I'm aware of
2 is the little flecks of metal and dirt that just got lodged in
3 my skin.

4 MS. PELLEGRINI: If I may have a moment, your Honor.
5 (Counsel confer off the record.)

6 MS. PELLEGRINI: Thank you, Ms. Corcoran. No other
7 questions.

8 MS. CONRAD: No questions.

9 THE COURT: No questions? All right, Ms. Corcoran.
06:18 10 Thank you. You may step down.

11 THE WITNESS: Thank you.

12 (The witness is excused.)

13 MS. PELLEGRINI: Your Honor, I want to advise the
14 Court I don't think I'll be able to finish the examination of
15 the next witness in the time allotted. I could start if the
16 Court wishes, but I would like the Court to know.

17 THE COURT: Well, I think we should start.

18 MS. PELLEGRINI: The government calls Karen McWatters.

19 KAREN McWATTERS, duly sworn

06:20 20 THE CLERK: State your name, spell your last name for
21 the record, keep your voice up and speak into the mic.

22 THE WITNESS: It's Karen McWatters.

23 DIRECT EXAMINATION

24 BY MS. PELLEGRINI:

25 Q. Good afternoon, Mrs. McWatters.

1 A. Hi.

2 Q. As a matter of fact, I know that most people might refer
3 to you as Karen Rand, but your name has changed.

4 A. Yes.

5 Q. And why is that?

6 A. I got married. This month it will be a year.

7 Q. All right.

8 A. So I'm McWatters now, yes.

9 Q. And, Mrs. McWatters, can you tell the jury just by giving
06:20 10 the town and city and state where you live?

11 A. I live in Somerville, Massachusetts.

12 Q. And are you currently employed?

13 A. No.

14 Q. And your previous employment?

15 A. I worked for Jasper White at the Summer Shack.

16 Q. What did you do there?

17 A. I was his personal assistant.

18 Q. And what did that entail?

19 A. Everything that he needed me to do. It was a great job.
06:21 20 They own several restaurants, and I just was his right-hand
21 man, girl, whatever. And whatever he needed me to do, that's
22 what I did.

23 Q. Okay. And how long did you have that position?

24 A. I was there for eight years.

25 Q. And while you were there, did you happen to meet Krystle

1 Campbell?

2 A. I did. I met her right at the beginning almost. When I
3 first went there, I met her. She had already been working
4 there.

5 Q. And so, therefore, how long had you known Krystle?

6 A. For the eight years that I worked there and -- yeah, for
7 eight years.

8 Q. And how would you describe your friendship with her?

9 A. We got to be fast friends right away. We both had the
06:21 10 same work ethic, we both enjoyed our job there. And she was a
11 manager, and in my role I had to work with a lot of the
12 managers. And right away I liked her personality, and we
13 started to enjoy time outside of work beside just being at
14 work.

15 Q. And was one of those activities enjoyed outside of work
16 going to the Boston Marathon?

17 A. We did. We did lots of sporting events together and the
18 Boston Marathon was one fun day that we got to do too.

19 Q. And prior to 2013 had you and Krystle ever gone to the
06:22 20 marathon together?

21 A. Not together. We had both gone before but not together.

22 Q. And how many times would you say you had gone before 2013?

23 A. I went two other times before that.

24 Q. And what else did you do with Krystle?

25 A. We did lots of fun stuff. We had a lot of the same

1 friends, so a lot of times -- we liked to try different
2 restaurants, go out for drinks, watch sporting events together,
3 go to games. And we did have a lot of mutual friends. And
4 eventually she had a boyfriend, and one of my boyfriend's
5 friends, so then we got to do a lot of things as couples.

6 Q. And was the 2013 marathon day one of those events?

7 A. Yes, it was.

8 Q. All right. And was your boyfriend-now-your-husband
9 participating in the Boston Marathon?

06:23 10 A. He was. He was running the marathon.

11 Q. All right. And how about for Krystle?

12 A. Krystle -- all of Kevin's friends came to see him run as
13 well. And so her boyfriend was also there floating around that
14 day. We were supposed to be meeting up with all of our
15 friends. At that time we were kind of spread out. Krystle and
16 I stopped where we stopped because we happened to get a good
17 spot to get a picture of Kevin. So we actually hadn't met up
18 with them yet, but that was the plan for the day, to watch him
19 run, and then afterwards all meet up to go out and have a
06:23 20 little bit of fun.

21 Q. Now, before you got to Boylston Street, where had you
22 gone?

23 A. We took the Red Line from Porter Square. I was living
24 over in Porter Square at that time, and so was she. And we
25 took the Red Line from Porter Square and we got off at Park

1 Street. And we stopped at Park Street at the Beantown Pub -- I
2 think that's what it's called -- and we had one drink there,
3 trying to decide how we were going to get where we were going
4 and where exactly we were going. We were supposed to be
5 meeting friends at the Summer Shack and Bukowski's, which is
6 next door to the Summer Shack. And we couldn't get a cab, so
7 we decided to walk. It was such a beautiful day.

8 We walked through the park, we walked through the gardens.
9 And we ended up on the wrong side of the street to get over to
06:24 10 the Summer Shack and Bukowski's. So we had been texting our
11 friends back and forth to say where we were and where we ended
12 up. And Krystle and I walked around a little bit, trying to
13 find a spot. And once we found a spot near the finish line, we
14 said, "We might as well just stay here." We had gotten texts
15 that Kevin was going to be coming in soon, there were friends
16 that were tracking his time, and it just seemed like a good
17 spot to just stay and try to take a picture. So that's where
18 we ended up, and we were separated from our friends.

19 Q. All right. Now, before that where you said "the gardens."

06:25 20 You mean the Public Garden?

21 A. Uh-huh.

22 Q. All right. And do you recall when you were there having a
23 picture taken?

24 A. We did. It was a beautiful day and we were being kind of
25 silly and touristy. And we just said, "Let's take a picture

1 here because it seemed like a good spot." And a girl walked by
2 and she said, "Let me take the picture for you." And we were
3 all laughing about it saying, "We're really not tourists.
4 We're from here. We've been here a million times." And she
5 said, "Oh, that's the best. Anyway, let me just take it," and
6 she took a picture. And that was the picture that was widely
7 spread around.

8 Q. All right. So, Mrs. McWatters, prior to coming in you've
9 seen some photographs and some videos. And in particular, what
06:25 10 has been marked as Exhibit 15 for identification --

11 MS. PELLEGRINI: Actually, your Honor, may we have
12 that up on the screen for the witness? All right.

13 Q. Mrs. McWatters, do you see what's portrayed on the screen?

14 A. Yeah, that's the picture.

15 Q. That's the picture that you're talking about?

16 A. Uh-huh.

17 Q. And this is you and Krystle on that day, on April 15,
18 2013?

19 A. Yes.

06:26 20 MS. PELLEGRINI: Your Honor, I would ask that this be
21 moved into evidence as Exhibit 15.

22 THE JURORS: We don't have it.

23 THE COURT: That's because I haven't given it to you
24 yet. Now it's in evidence and you may see it.

25 (Government Exhibit No. 15 received into evidence.)

1 BY MS. PELLEGRINI:

2 Q. And so, Mrs. McWatters, I just want to ask you about what
3 you and Krystle are wearing, all right? So looking at first
4 you, the black sweater, but are you also wearing something
5 around your waist?

6 A. Yeah, I had a black jacket -- like a lightweight jacket,
7 but it was warm that day and I had taken it off and tied it
8 around my waist.

9 Q. All right. And for Krystle?

06:26 10 A. She didn't bring a jacket.

11 Q. Did she remain wearing this bright blue sweater?

12 A. Yes.

13 Q. All right. And about what time was this, do you think,
14 that this picture was taken?

15 A. If I had to say, I would guess it was probably maybe two
16 o'clock. It might not have been quite that late but it was
17 pretty close to -- we were almost to the place we were
18 standing, so.

19 Q. Okay. And so from here you went to try to find a spot?

06:27 20 A. Yes.

21 Q. All right. And if you will, again -- I'm sorry I
22 interrupted you -- could you tell the jury where you ended up
23 on Boylston Street?

24 A. We were close to the finish line. We were across the
25 street from the stands. We were under the flags.

1 Q. All right.

2 MS. PELLEGRINI: So may I have -- I believe it's
3 already in evidence -- Exhibit 18, please.

4 Q. Mrs. McWatters, I'm going to ask you to look at this
5 photograph and I'm going to direct your attention to what is --
6 I'm drawing a circle in magenta -- actually, I hope I draw a
7 circle in magenta -- on this side of the screen. Do you
8 recognize the woman right there?

9 A. Yes.

06:28 10 Q. Who's that?

11 A. That's me and Krystle.

12 Q. All right. And do you remember being at this location?

13 A. Yes.

14 Q. All right. And so what's happening here?

15 A. People are crossing the finish line. We actually took a
16 picture of these flags too, this area that we were standing,
17 and we put it on Facebook.

18 Q. And from this location did you move to another spot, if
19 you remember?

06:28 20 A. We were shuffling around but we were right in -- we stayed
21 in that same area. We were shuffling around. As people were
22 watching their loved ones cross, and friends, they would move
23 out of the way and we would shuffle up a little bit. So we
24 never ventured too far out of that space, it was just kind of
25 shuffling up.

1 Q. And now we know that -- we talked about the flags that are
2 pictured throughout this photograph. And looking this way, and
3 I'm pointing to the right-hand side of the screen, do you know
4 what's here, what stores are here, where you were in front of?

5 A. You know, I didn't really pay attention to what was behind
6 us that day. And even though I'm on that street a lot, I
7 wasn't really familiar with the businesses and stuff there.
8 And that day it was so busy and so full of action and things
9 going on, I don't really recall what was behind me for a store.

06:29 10 Q. Uh-huh. And what's the next thing that you remember
11 happening?

12 A. Once we got moved up a little bit we -- I kept getting
13 texts about Kevin, and someone had said that he had got a cramp
14 and he was slowing down and that it might take him a little bit
15 longer to reach it. And shortly after that -- I mean, I
16 remember looking at my phone and then I remember being on the
17 ground. So shortly right after that the explosion happened.

18 Q. All right. So you said you're looking at your phone?

19 A. Yes.

06:30 20 Q. And then you're on the ground?

21 A. Yes.

22 Q. Okay. Tell us what you heard, what you saw, what you
23 felt.

24 A. It was chaos. It was confusion, screaming, yelling,
25 smoke. And I remember that my ears -- it was difficult -- it

1 was weird hearing and trying to figure out what happened, just
2 remembering that I had been smiling, and laying on the ground
3 wondering if I was dreaming, did I really get to the marathon.
4 And it only took a few minutes because I could hear people
5 screaming for people to get down -- you know, nobody really
6 knew at that point what really had happened -- and then there
7 was another explosion and then there was more chaos, even worse
8 than the first time, and more screaming and yelling. And by
9 that time I had tried to sit up and looked at my foot and my
06:31 10 leg and realized something terrible had happened to us.

11 Q. When you say "to us" -- so first talk about you.

12 A. Okay.

13 Q. Okay. When you said "something terrible had happened,"
14 with respect to you, what happened?

15 A. At that point I really didn't know how bad my injury was.
16 I could see the front of my leg and I could see that my foot
17 was over sideways. And I tried to sit up and move closer to
18 Krystle where we could talk to each other. And when I put my
19 hands on the ground and tried to shuffle myself and move, there
06:31 20 were hot pieces of things all over the ground. And at that
21 point I didn't really understand what it was; I just knew it
22 was burning my hands and I was having trouble moving. But
23 also, as I was trying to move I was in excruciating pain and I
24 knew that something, you know, was really bad with my leg. But
25 I wanted to drag myself over to her. And so that's what I did.

1 I got as close as I could to her and, you know, waited --
2 screamed, waited for help.

3 Q. What observations were you able to make of Krystle?

4 A. I -- you know, I got close to her. And there was so much
5 chaos and so much screaming and trying to figure out what was
6 going on, I -- for some reason, I don't know why, I got close
7 to her head and we put our faces together and we tried to talk
8 to each other and I never really looked at Krystle's injuries.
9 I never really knew at that point how severe her injuries were.
06:32 10 I truthfully didn't even realize how bad mine were either.

11 Q. Were you able to talk to her?

12 A. I did. She very slowly said that her legs hurt, and we
13 held hands. And shortly after that her hand went limp in mine,
14 and she never spoke again after that.

15 MS. PELLEGRINI: For the witness, only, your Honor,
16 can we have Exhibit 16 marked for identification up on the
17 screen.

18 THE COURT: Just -- what's the number?

19 MS. PELLEGRINI: 16.

06:33 20 MR. CHAKRAVARTY: It's in.

21 MS. PELLEGRINI: It's in? I'm sorry. I'm sorry.
22 It's already in.

23 BY MS. PELLEGRINI:

24 Q. Mrs. McWatters, with respect to Exhibit 16, I'd ask you to
25 take a look at that. And do you see yourself there?

1 A. Yes.

2 Q. And could you please, by circling the screen, show the
3 jury where you are.

4 A. Did it do anything? (Indicating)

5 Q. Not yet. You have to touch with the pad of your finger.

6 A. Okay. (Indicating)

7 Q. So I'd note for the record you've made a yellow circle
8 about three-quarters of the way over to the right. And there
9 are two faces that you have circled there.

06:33 10 A. Yes.

11 Q. And can you tell us why? Who is that?

12 A. That's Krystle.

13 Q. With her mouth open?

14 A. With her mouth open, and she has the blue shirt. And
15 that's me next to her.

16 Q. And do you remember this moment?

17 A. Yes, I remember, you know, like everything that I said,
18 the chaos, being afraid, trying to sit next to her. But, you
19 know, like I said, at that moment it's hard to imagine what's
06:34 20 really going on.

21 Q. And when you said that you and she spoke and then her hand
22 went limp, what's the next thing you remember after that?

23 A. That I was really scared. And I started screaming for
24 help -- for somebody to help us. And I was screaming, "Help us
25 or we're going to die," but truthfully, I didn't really think

1 we were going to die. I was just so panicked I was screaming
2 that. And everyone was screaming. And everyone was screaming
3 for help. And it seemed like a long time before help got to us
4 but it probably really wasn't.

5 Q. Mrs. McWatters, in addition to what you were hearing and
6 then what you felt also, was there anything about the smell in
7 the area after the blast?

8 A. Yeah, it was a -- I don't even know how to describe the
9 smell but it was, you know an unusual smell, you know, not
06:35 10 like -- I truthfully thought it was a bomb right away and I
11 don't even know why I did. I just saw things like that on TV
12 and thought it was that. It could have been something else.
13 But I thought it was because of the smell in the air just was
14 so strange and, you know, all the chaos and the damage. And
15 there were two explosions not close to each other, it just
16 seemed like it had to be something like that.

17 Q. Mrs. McWatters, you just told us that you held Krystle's
18 hand until it went limp. Did you ever see Krystle Campbell
19 alive again?

06:35 20 A. No.

21 Q. Do you remember what happened to you after that?

22 A. After -- from there?

23 Q. Yes.

24 A. When they took me to the ambulance?

25 When finally people came over, they were yelling that we

1 were critical and get help. "Get help." And they pulled
2 Krystle away from me really fast and started to do CPR. And at
3 that point I thought she didn't make it. I didn't know that
4 she didn't, I wasn't sure, but it seemed really bad.

5 And then they started to put belts on my leg at that
6 point. And I was in so much pain at that point, that's all I
7 was focusing on, and screaming and yelling in pain. And then
8 people kept talking in my face and trying to hold my face and
9 keep me from passing out, so I never saw Krystle after that.

06:36 10 Q. Do you remember being next to her and being attended to by
11 people who had responded to the scene?

12 A. Yes. Yes.

13 MS. PELLEGRINI: I do not believe -- is Exhibit 17 in
14 evidence yet?

15 THE COURT: Seventeen is not.

16 MS. PELLEGRINI: So I would like that just for the
17 witness, your Honor, please.

18 BY MS. PELLEGRINI:

19 Q. Mrs. McWatters, I'd ask you to look at Exhibit 17 marked
06:37 20 for identification. Do you recognize this -- what is here in
21 this photograph?

22 A. This is when they came to us and they were checking our
23 pulse and checking to see if, you know, we were alive. I don't
24 know, whatever. And that's when shortly after that Krystle got
25 pulled away from me.

1 Q. And does this fairly and accurately represent what you
2 recall your position with respect to Krystle and the scene
3 looked like after the blast?

4 A. Yes.

5 MS. PELLEGRINI: Your Honor, the government would move
6 Exhibit 17 in evidence to be shown to the jury.

7 MS. CLARKE: No objection other than that as noted in
8 the papers.

9 THE COURT: All right. Yes. Okay. That objection is
06:37 10 overruled. It may be admitted.

11 (Government Exhibit No. 17 received into evidence.)

12 THE COURT: It is now being displayed.

13 BY MS. PELLEGRINI:

14 Q. Mrs. McWatters, with respect to Exhibit 17, do you know
15 what's happening to you at this time?

16 A. Right then, that's when they were starting to talk -- this
17 person leaning over us was trying to talk to us, trying to get
18 us to say our name or talk. And that's all I remember at that
19 point, trying to say my name and tell him who I was.

06:38 20 Q. Were you able to do so?

21 A. I did.

22 Q. And how long do you recall being in the area then before
23 you left?

24 A. I think after this point it seemed like it went really
25 fast. Once I got the belt on, they got me onto something and

1 were pulling me towards an ambulance and away from Krystle.

2 Q. And what's the next thing you recall?

3 A. Someone handed me a purse and a phone. And at the time --
4 I knew it was Krystle's but I didn't know what to do with it,
5 and I do believe I put Krystle's phone in my pocket.

6 Q. And what hospital were brought to?

7 A. Mass. General.

8 Q. And what happened there?

9 A. Once I got to Mass. General, I had started to get confused
06:39 10 and not really -- I knew I was at Mass. General and I knew that
11 they were taking me to surgery. They were telling me right
12 away, "Everything's going to be okay" and rushing me. And I
13 knew but -- they cut my clothes off in the ambulance so I
14 didn't have any of my things with me when they were taking me
15 away, and I knew that too because I was really concerned about
16 being able to call my sons, and I kept asking for someone to
17 call them but I couldn't recall their phone numbers.

18 Q. And you say you have two sons. And how old were they
19 then?

06:39 20 A. Thirty-one and 33.

21 Q. And so you were not able to reach them?

22 A. No.

23 Q. Were you able to reach Kevin?

24 A. No.

25 Q. Were you able to reach anyone?

1 A. No.

2 Q. What's the next thing you remember?

3 A. The next thing I remember was waking up, and my brother
4 and my son and Kevin and our friend Michael were there.

5 Q. And when did you learn the extent of your injuries?

6 A. That's when I think when I woke up, people were trying to
7 tell me. I hadn't lost my leg at that point. They were trying
8 to save my leg. And they were trying to explain that to me,
9 that they were trying to save my leg. And at that point people
06:40 10 were hopeful that I could save my leg. And that was -- I
11 didn't -- I don't remember at that point anybody getting into a
12 lot of detail because I was heavily drugged.

13 Q. But they were not able to save your leg. Is that correct?

14 A. No, they weren't.

15 Q. And I'd note for the record when you walked in today, you
16 have a prosthetic device. Is that correct?

17 A. Yes.

18 Q. Tell us what happened.

19 A. After I think -- I believe it was two days but I'm not
06:40 20 exactly sure, but I believe it was two days and then I was told
21 that they were going to have to amputate my leg. And by that
22 time my leg was in excruciating pain. It hadn't started to
23 die. It wasn't doing anything. No matter how much drugs they
24 gave me, it was killing me. So they said, "We're just going to
25 take it." And then they just -- they took my leg that day.

1 Q. And where was your leg amputated?

2 A. At Mass. General.

3 Q. Above or below the knee?

4 A. Oh, below.

5 Q. And what types of rehabilitation have you gone through?

6 A. Lots, being the typical that everyone has to go through.

7 I went to Spaulding for -- from Mass. General. I was in Mass.

8 General for two weeks and then I went to Spaulding for several

9 weeks and then I was moved somewhere elsewhere where I had some

06:41 10 physical therapy for a few weeks before I was able to go home.

11 And then once I went home, I continued with therapy for another

12 six months.

13 Q. And how many prosthetic devices have you been fitted with
14 since that time?

15 A. The first one I kept for a long time, I just had socket
16 changes on it. I wanted to be sure before I invested a lot of
17 money in legs that I had something that fit me properly. So I

18 did hang onto the first one for a long time. And then the

19 first leg that I really wanted beside that one was so that I

06:42 20 could swim. I wanted to be able to get into a pool and go to

21 the beach in the summer. So that was the second leg I got.

22 Then once I started to get better, I have the leg that I have
23 currently because I wanted to be able to get more exercise.

24 Q. Now, Mrs. McWatters, with respect to having Krystle's
25 phone on you, what, if any, confusion did that cause at the

1 hospital?

2 A. I didn't realize what was going on for several days, but
3 when my family could not find me, none of -- my son, my
4 brother, Kevin, Michael searched for me all night. They went
5 to every hospital, they went to the police several times. They
6 kept looking for me. No one could find me. And they were told
7 that Krystle was in surgery, and Krystle's family and friends
8 were all in the waiting room waiting for Krystle to come out of
9 surgery. And we had got confused at the hospital because I had
06:43 10 Krystle's phone.

11 So when the phone rang, someone answered it and told the
12 family that Krystle was in the hospital. And at that point
13 everyone thought it was Krystle, and my family and friends
14 couldn't find me. And it was them continuing to look and
15 continuing to badger people and say I was six-feet tall. Was I
16 in the morgue? You know, how tall was the woman that was in
17 surgery? When they finally sent someone in to identify
18 Krystle, they first sent in Krystle's parents in who knew it
19 wasn't Krystle and were so devastated and sent Krystle's
06:43 20 boyfriend, Joe, at the time in who knew me very well and knew
21 it was me, and called Kevin and my family to come to the
22 hospital.

23 Q. And is that when Kevin and your family showed up and were
24 able to find you?

25 A. Yes.

1 MS. PELLEGRINI: One moment, your Honor.

2 (Counsel confer off the record.)

3 MS. PELLEGRINI: Thank you, Mrs. McWatters. I have no
4 further questions.

5 MS. CLARKE: No questions.

6 THE COURT: No questions? All right, ma'am. Thank
7 you. You may step down. We've come to four o'clock. We'll
8 recess for the day.

9 Jurors, we've had good progress for the first day.

06:44 10 You know what I'm going to tell you, don't you? Please avoid
11 any discussion of the case, any exposure to any stories. And
12 there's likely to be stories about this case tonight. Please
13 be sure you stay away from them and we'll see you in the
14 morning. As a matter of fact, there are plenty of other things
15 in your life to think about tonight. We'll see you tomorrow
16 and continue with this case. Have a good evening.

17 THE CLERK: All rise for the Court and the jury.
18 Court will be in recess.

19 (The Court and jury exit the courtroom and the
20 proceedings adjourned at 4:01 p.m.)
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C E R T I F I C A T E

I, Marcia G. Patrisso, RMR, CRR, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

Date: 9/25/15